

THE BACKGROUND FOR THE
EARLY CHRISTIAN TEACHING ON
USURY

A DISSERTATION

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INTRODUCTION

Times certainly change. It seems almost incredible today that the morality of profit on a loan could be questioned. Credit transactions are part of our lives. We take out loans at interest. We buy on time. We mortgage property. Interest payments are one of the biggest items on our huge national budget. Yet the Old Testament, the greatest of the Greek philosophers, rabbinic literature, numerous Fathers of the Church, and a long string of councils from 306 to 1450 emphatically condemned usury, in the sense of "profit on a loan." To put the matter more dramatically, a continuous Judaeo-Christian tradition from about 1000 B.C. to 1450 A.D. said that usury was sinful.

Today the morality of interest-taking is a dead issue. Christians receive and pay out interest with a clear conscience. Yet the study of a concept like usury can be rewarding, because instructive of the way moral thinking lives and changes. John T. Noonan's book, The Scholastic Analysis of Usury (Cambridge, Mass.: Harvard University Press, 1957), is such a study. Noonan's work gives a detailed account of the scholastic analysis of usury as it developed from 1150 to 1450, as it underwent criticism and revision from 1450 to 1750, and as it is viewed at present. Significantly, Noonan notes that there has been no single scholastic theory concerning usury. The primary reason for considering usury as sinful was its condemnation by the teaching authority of the church. Over the centuries theologians marshaled arguments to support that condemnation. But the lack of a unified theory led to clear inconsistencies in practice. Some types of credit transactions were strictly

prohibited; others were permitted, even though they differed from some illicit transactions only in form. Gradually, over the three-hundred-year period stretching from 1450 to 1750, the interpretation of the prohibition changed radically. The revised theory approved all the basic credit mechanisms of capitalistic society. A new willingness to consider the commercial lender's viewpoint and a rigorous criticism of earlier arguments led to a clear change in attitude.

Much of the discussion about usury, Noonan shows, has suffered from a failure to consider the scholastic theory broadly enough, to take into account the multiple character of its theological, economic and legal foundations and the multiple aspects it presented in practice, especially its encouragement of alternate methods of credit besides the loan. There has been a temptation to restrict the theory to some simple base (the sterility of money, for example, or the fiat of ecclesiastical authority) and to consider the prohibition as absolutely forbidding any making of profit through the extension of credit. The quest for a single all-embracing key to the scholastic analysis has led to gross oversimplification. The scholastic analysis is the result of the interaction of multiple forces; its history contains no facile prescription. It was religious in origin, and religious authority controlled much of its development. A philosophical ideal of justice lay beneath its formulations. It was a first attempt at an economic theory. Complicated legal thought surrounded its development and revision.

Noonan's study covered only a relatively late period in the history of the usury question. Its detailed examination of the scholastic analysis of

usury necessarily presumed the Christian teaching on usury as it had developed earlier. The work which follows will attempt to examine that earlier teaching.

In his initial survey, Noonan noted the critical importance of the letter Nec hoc quoque of Pope Leo the Great. With this letter, he pointed out the lines of the usury question were already clearly drawn. Leo's letter is the point of departure for the present work. Obviously this work is not directly concerned with the clear change in the magisterial position regarding usury. It ends its presentation at a point in history long before that change began to take place. It simply sets out to ask questions that are significant for positive theology and for future historical investigations into the development of doctrine. It attempts to detail what the early Christian teaching on usury was and how it came to be that way, how it compared with the thought of the day and how it interacted with that thought, what reasons supported it and what factors mitigated its absoluteness. The laws of the development of doctrine are known from actual cases. As Cardinal Newman, Karl Rahner and Bernard Lonergan have all pointed out in their works on development, theories are only as good as the facts. Development is not a single process that can be determined a priori. It is a genuinely historical process under the impulse of the Spirit of God. No single set of laws can be formulated that will encompass development; case differs from case as the Spirit moves freely. Yet historical reality does reveal the process of development, and the study of one case, like the usury question, can be instructive, if not adequate, for understanding other cases.

Such an investigation is also, hopefully, instructive from the viewpoint of theological methodology. It is clear that the early Christian attitude toward usury did not derive from a theory concerning the nature of money nor even simply from authoritative ecclesiastical pronouncements, though each of these factors played its role in the ongoing development of the usury prohibition. Rather, it rested on the Christian community's understanding of sacred scripture and its sensitive concern for practical charity among the brethren. This Christian self-understanding created a tension between the early church and the culture which surrounded it. In its zeal to be consistent with its ideals, the community at times resisted accommodation in situations where continued reflection and the development of new ways of framing questions allow the later theologian to see that accommodation is possible.

From the viewpoint of methodology this investigation, like Noonan's study of the scholastic analysis, also illustrates the inadequacy of any single key to the understanding of the usury question. It shows that what is considered relatively wrong in one age may be taken as absolutely wrong in another, that what is wrong for religious reasons may later be regarded as wrong from the nature of things, that what is at one time seen as a sin against charity may at another time be seen as a sin against justice. A single moral outlook can severely limit its users. In an age when a prescriptive mentality prevails, the reasons for prohibitions are likely not to be seen clearly, or if once seen, to be lost in the course of time. Later attempts to recover those reasons operate from a distinct disadvantage. They are far separated from

the sources of the original teaching. They work from a different mentality, from different categories, from different contextual data. In the question at hand, the reasons for the Israelite and early Christian teaching on usury were different from those used in the scholastic analysis of the question. Yet moral rules, like those concerning usury, cannot exist in a vacuum. To apply a norm means that its purpose must be discovered so that the types of actions it prescribes or prohibits may be determined. Through repeated attempts at application, the Christian teaching on usury became nuanced and radically altered. The core of the prohibition became more and more evident and its limits consequently sharper.

Up to the present there has been no full treatment of the origins of the early Christian teaching on usury, though naturally there have been studies of particular points treated here. The research on the individual chapters of the work that follows is original. Where an earlier study has been used (particularly, as noted in the text, in the fourth chapter), an attempt has been made to discover new data and to criticize earlier findings in that light. Much of the evidence used here was not available to earlier authors, so that their factual mistakes, pointed out in the course of this work, were often unavoidable and are quite understandable. Even articles written as late as 1950 were not able to benefit fully from the continually growing mass of information that scientific research has uncovered concerning usury. Such pertinent data has been incorporated into this work. In the body of the work only primary sources have been directly quoted: ancient Near-Eastern documents, the sacred scriptures, Graeco-Roman literature, early

rabbinical teaching, the Fathers and councils. Naturally, the work is also indebted to numerous secondary sources; specific reference to these has been made in the notes and bibliography.

For the sake of consistency in orthography and abbreviations, the following works have been used as standards: G.W.H. Lampe, A Patristic Greek Lexicon (Oxford: Clarendon Press, 1961 -); H.G. Liddell and R. Scott, A Greek-English Lexicon (Oxford: Clarendon Press, 1940); C.T. Lewis and C. Short, Harper's Latin Dictionary (New York: American Book Co., 1907); H.L. Strack, Introduction to the Talmud and Midrash (Phila.: Jewish Publication Society of America, 1931). For the most part the dates for historical figures and their works have been taken from: E.F. Campbell, "The Chronology of Israel and the Ancient Near East, Section B," in G.E. Wright (ed.), The Bible and the Ancient Near East (Garden City: Doubleday Anchor Book, 1965), p. 281-99; The Oxford Classical Dictionary (Oxford: Clarendon Press, 1949); J.J. Quasten, Patrology (Westminster, Md.: Newman, 1950 -); F.L. Cross (ed.), The Oxford Dictionary of the Christian Church (London: Oxford University Press, 1957).

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The study begins in the ancient Near East, where the problem of profit on a loan first came into question.

CHAPTER I
USURY AND RESTRICTIONS ON INTEREST-TAKING
IN THE
ANCIENT NEAR EAST

Even in the best of times the debt-ridden suffered inhumanly in the ancient Near East. Insolvent debtors and their families were sold as credit-slaves and might remain so for their lifetime. So rampant was personal seizure of defaulters that it became a basic means for stocking the huge Near-Eastern slave markets.¹ One can only wince when reading pitiable stories like that of an Assyrian who owed thirty shekels of silver and, being unable to pay, sold his daughter to his creditor.² A stark Sumerian and Accadian proverb aptly reflected the state of the times: "The strong man lives off what is paid for his strength, and the weak man off what is paid for his children."³

The Code of Hammurabi⁴ and Assyrian law⁵ guaranteed the right of creditors to seize the defaulting debtor. The creditor assumed full power

¹ Isaac Mendelsohn, Slavery in the Ancient Near East (N.Y.: Oxford University Press, 1949), p. 23.

² C. H. W. Johns, Babylonian and Assyrian Laws, Contracts, and Letters (Edinburgh: Clark, 1904), p. 86.

³ W. G. Lambert, Babylonian Wisdom Literature (Oxford: Clarendon Press, 1960), p. 248.

⁴ Cf. Code of Hammurabi, #114-19, 151-2; cf. J. Pritchard (ed.), Ancient Near Eastern Texts (Princeton: Princeton Univ. Press, 1950), p. 170f.; henceforth, ANET.

⁵ Cf. G. R. Driver and J. C. Miles (ed.), The Assyrian Laws (Oxford: Clarendon Press, 1935), p. 272ff.

over the defaulter and could dispose of him as he wished.⁶ But gradually legislators sought to mitigate the abuses inevitably connected with such absolute power. Near-Eastern legal prescriptions and wisdom literature⁷ condemned abuse of the debtor and sought to bring about reform.

On top of the stele on which the Code of Hammurabi is inscribed, the great legislator is pictured in a gesture of adoration receiving the law from Šamaš' hands. Here was the paradigm of the ideal king. He was the executer of justice. He received his commission from the gods and took pride in carrying it out zealously.

Among the ideal king's first concerns were the poor. If the gods had compassion on the poor, so too must the king. Great legislators like Urukagina⁸ (c. 2350 B.C.), Ur-Nammu⁹ (c. 2060-2043 B.C.), and Hammurabi¹⁰ (c. 1728-1686 B.C.) boast in their inscriptions that they had fulfilled this duty.

⁶ For more details, cf. Mendelsohn, esp. p. 23-33.

⁷ In examining the usury-question, one necessarily comes in contact with a great bulk of ancient literature concerned with the problems of the poor. I hope in the future to be able to organize and present some of this information. The literature mentioned above provides the earliest literary sources taking up a social problem which still plagues us today, poverty. For a good summary, which nevertheless omits relevant material, cf. F. Charles Fensham, "Widow, Orphan, and the Poor in Ancient Near Eastern Legal and Wisdom Literature," Journal of Near Eastern Studies, 21 (1962), p. 129-139. Cf. also, Lambert, p. 89, 101, 119, 135, etc.

⁸ Alexander Scharff and Anton Moorgat, Ägypten und Vorderasien im Altertum (Munich: F. Bruckmann, 1950), p. 242-3. For the dates used throughout this chapter, cf. the so-called "low chronology" as presented by E.F. Campbell, "The Chronology of Israel and the Ancient Near East, Section B," in G.E. Wright (ed.), The Bible and the Ancient Near East (Garden City: Doubleday Anchor Book, 1965), p. 281-299.

⁹ E. Szlechter, "À propos du Code d'Ur-Nammu," Revue d'Assyriologie et d'Archeologie Orientale, 47 (1953), p. 6.

¹⁰ ANET, p. 163f.

They were reformers, and a policy of defending the poor played a key role in their renewal of social legislation. Unfortunately, however, the lot of the poor remained miserable in spite of efforts at reform.

Concern for the poor recurs time and again in Mesopotamian, Egyptian, Ugaritic, and Israelite legal and wisdom literature.¹¹ Israel's prophets intone the theme loudly and clearly.¹² The full history of this strain of ethico-social thought cannot be traced here; discussion must be restricted to what concerns the debtor. It is in this broader context, however, that the earliest legislation concerning loans and interest-taking arises. The debtor was among the most pitiable of the poor. Interest was often the cause of his misery.¹³ From the latter part of the third millenium before Christ, reform legislation sought to limit the creditor's power over the debtor. As early as the beginning of the second millenium laws limiting interest-taking are found. It is this legislation that must now be examined.

The Earliest Restrictions

Economic documents from Mesopotamia and from the rest of the cuneiform world show that with the rise of city-civilization came the common adoption of usury, or profit on a loan. It was to play a role of greatest import for capital investment in the economic life of the Near East throughout the whole period of city-culture.

¹¹Cf. note 7.

¹²The prophetic denunciation of usury will be treated in the second chapter.

¹³Cf. Mendelsohn, p. 25.

In pre-city culture occasional primitive forms of usury are found. Men borrow seed or animals for use and give a percentage of the increase in return. Tools too (e.g., a fish-hook) are lent out on condition of a percentage of the produce. But these are very limited types of investment.¹⁴

With city-culture came regular loans at interest.¹⁵ Investors came to regard inorganic materials as living organisms which could reproduce. As a man had formerly been expected to return a cow with a percentage of the offspring, so now would it be with bronze or silver. It is noteworthy that the Sumerians used the same word, māš, primarily for calves and secondarily for interest.¹⁶ The Egyptians seem to have developed their word for interest, mš, from the verb "to give birth," mšj.¹⁷ With the change-over to large-scale usury, exchangeable goods took on the status of reproductive capital rather than just stored provisions. They came to be used as money with a definite rate of exchange.

While loans of seed, dates, figs, and animals perdured, they often took on the quality of an investment, and gold, silver, bronze, copper and lead came into use, even in proto-literate times, as means of exchange. When exchangeable goods reached "money status," their quality

¹⁴Fritz Heichelheim, An Ancient Economic History, translated by Joyce Stevens, (Leiden: Sijthoff, 1958), I, p. 54.

¹⁵Heichelheim, I, p. 104.

¹⁶G. R. Driver and J. C. Miles (ed.), The Babylonian Laws (Oxford: Clarendon Press, 1955), I, p. 174.

¹⁷Heichelheim, I, p. 105.

and weight were checked by more or less official standards,¹⁸ which varied from place to place or from temple to temple. In time, almost every form of exchangeable good could be used as "money" and was lent at interest.

Since the new system gave the rich a great advantage over the poor, new states began to take measures to protect the poor. Laws concerning usury were among these measures.

It is difficult to paint a detailed picture of the attitudes of ancient civilizations about usury. One can be certain enough about general outlines, but real problems arise in trying to pinpoint the specific practices of various nations. The methodology to be used is therefore extremely important.

One cannot look solely at law. In the first place, legal sources are limited. Of what authors sometimes call "codes" from the ancient world, there are only:¹⁹

- 1) the Ur-Nammu Code (c. 2050)
- 2) the Code of Eshnunna (c. 1925?)
- 3) the Code of Lipit-Ishtar (c. 1860)
- 4) the Code of Hammurabi (c. 1700)
- 5) the Hittite Code (c. 1450)
- 6) the Assyrian Code (c. 1350)
- 7) the Covenant Code (c. 1000)

¹⁸Cf. Code of Hammurabi, #51 (henceforth, CH); also, *ana ittišu*, #5, found in Driver and Miles, *The Babylonian Laws*, I, p. 313; for a more complete treatment, cf. Benno Landsberger, *Die Serie ana ittišu* [Rome: Pontifical Biblical Institute, 1937], p. 105-106).

¹⁹George Mendenhall, *Law and Covenant in Israel and the Ancient Near East* (Presbyterian Board of Colportage of Western Pennsylvania, 1955), p. 9.

Second, none of these "codes" pretends to be complete or monolithic legislation.²⁰ It has been long remarked that no one appeals to the Code of Hammurabi as a canonist would appeal perhaps to the Code of Canon Law.²¹ Third, many of the laws in the ancient "codes" come from different periods (covering a span of perhaps 500 years in Hammurabi's case). Fourth, the laws contain many hapax legomena, so that their meanings are often not clear to the modern reader. Damage to texts and lacunae just increase the chances of obscurity or total lack of comprehensibility.²² Only a small part of the Code of Lipit-Ishtar, for example, is extant; historians can only speculate on what filled the gaps. Finally, it is difficult to determine accurately the place of origin or the date of particular laws, or at times even of the final redaction.

Summarily then, one cannot depend solely on official legal sources because of their real limitations. Happily other sources are available, though these too are limited.

Customary law and practice play an extremely important role in the ancient world. As shall be noted later, the peoples of the ancient Near East simply did not regard law as having the same normative force that people in the modern world, under Graeco-Roman influence, expect

²⁰Victor Korošec, "Les Lois Hittites et leur Evolution," Revue d'Assyriologie, 57 (1963), p. 144.

²¹Benno Landsberger, "Die Babylonischen Termini für Gesetz und Recht," Symbolae ad iura orientis antiqui pertinentes Paulo Koschaker dedicatae. (Leiden: Brill, 1939) p. 232.

²²G. Boyer, "De la science juridique et de sa méthode dans l'ancienne Mésopotamie," Semítica, 4 (1951-2), p. 6.

it to have. The availability of sources for customary law and practice, however, varies greatly. Mesopotamian private documents, for example, give evidence of many laws not inserted in any extant "code"; the same holds for Egypt, from which there is no single body of law but much information on practice. But the investigator runs into greater limitations (with resulting ignorance) in studying Hittite law since almost no private documents have been unearthed at Bogazköy. Sources therefore vary.²³

To gain an understanding of ancient Near-Eastern attitudes concerning usury, the extant legal sources will first be examined; then a study of the non-legal data will be made.

1. Legal Sources

In general, interest was allowed everywhere in the ancient Near East except in Israel (which shall be discussed in the next chapter). Long before Israel's restrictive measures, however, ancient Near-Eastern legislation had put sharp limitations on rates of interest and the manner of treating defaulting debtors.

Before the Code of Eshnunna there is evidence only of indirect limitations. The reform of Urukagina, King of Lagash, from the Ur I Period (c. 2350),²⁴ the reform of Gudea of Lagash,²⁵ from the beginning of the Ur III Period (c. 2060-1950), and the Code of Ur-Nammu (c. 2060-2043)²⁶

²³For a good account of the limitations of legal sources, cf. Victor Korošec, "Le Code de Hammurabi et les droits antérieurs," Revue Internationale des Droits de l'Antiquité, 8 (1961), p. 13-14.

²⁴Cf. notes 8 and 9.

²⁵Scharff, p. 278; cf. also, note 9.

²⁶Cf. Fensham, p. 129; cf. also Szlechter, "Le

aim to protect the widow and the fatherless against the rich man. They protect the debtor only indirectly by guaranteeing the rights of his family after his death (cf. 2 Kings 4:1 ff. for an interesting parallel).

The Laws of Eshnunna are the first extant legal source dealing directly with loans at interest. They were discovered between 1945 and 1949 at Tell Abu Harmal, an outpost of the Kingdom of Eshnunna during the Old-Babylonian Period. They date from shortly before the time of Hammurabi.²⁷ Laws 18A to 21 take up the problem. The pertinent texts read as follows:²⁸

18A. Per 1 shekel (of silver) he will add one sixth of a shekel and 6 grains as interest; per 1 kor (of barley) he will add 1 (pan) and 4 seah of barley as interest.

19. The man who gives (a loan) in terms of his retake shall make (the debtor) pay on the threshing floor.²⁹

Prêt dans l'Ancien Testament et dans les codes mésopotamiens d'avant Hammourabi, "Revue d'Histoire et de Philosophie Religieuses", 35 (1955), p. 18-19.

²⁷ Louis F. Hartman, Review of The Laws of Eshnunna, by Albrecht Goetze, Catholic Biblical Quarterly, 18 (1956), p. 439-442. L. F. Hartman makes pertinent suggestions on the name of the code, its date, and the translation.

²⁸ Albrecht Goetze, The Laws of Eshnunna ("Annual, American Schools of Oriental Research", 31 [1956]), p. 64f.

²⁹ For #19 Goetze's earlier translation has been used; this appeared in ANET, p. 161-3. L. F. Hartman (cf. note 27) criticized Goetze's revisions of this paragraph as meaningless. He also doubts the whole interpretation of the paragraph.

20. If a man lends out money to the amount recorded, but has the corresponding amount of barley set down to his credit, he shall at harvest time obtain the barley and its interest, (namely) 1 (pan) (and) 4 seah per 1 kor.

21. If a man lends out money in terms of its initial (amount), he shall obtain the silver and its interest, (namely) one sixth (of a shekel) and 6 grains per 1 shekel.

The rate of interest in 18A is $1/6$ of a shekel plus 6 grains, or 36 grains. On a shekel of 180 grains, this equals 20% as the rate stipulated for transactions in money. For barley, the rate is 1 pan plus 4 seah, or 100 qa. On a kor of 300 qa, this comes to $33 \frac{1}{3}\%$.

These rates are, for the most part, neither annual (the modern practice), nor monthly (Graeco-Roman practice), but cover a period from seed-time till harvest.³⁰

In #19, where no interest at all is mentioned, it is likely that the interest was added to the capital from the very beginning, since this was common practice. Both were to be repaid at the earliest possible date; that is, when the harvest became available on the threshing-floor.³¹

In #20 interest is to be paid at the legal rate for barley, though the loan is actually made in silver. But though made in silver, the loan is recorded in terms of barley and must therefore be repaid in barley.

#21 refers to a straight loan of money, to be repaid with interest at the rate stipulated in #18A.

³⁰ Cf. Driver and Miles, The Babylonian Laws, II, p. 175.

³¹ Goetze, p. 66. L. F. Hartman suggests that this paragraph refers to giving the loan rather than receiving it on the threshing floor (cf. note 27). The connection of loans with the harvest is nevertheless certain from other sources.

To avoid repetition a fuller commentary on these paragraphs will be given in connection with the discussion of the Code of Hammurabi. Here it is sufficient to say that the Laws of Eshnunna provide the first evidence of legal limitations on interest-taking. They limit rates to 20% for money and 33 1/3% for grain. As shall be seen, these rates perdure throughout the Old-Babylonian Period. While this first direct legal intervention on behalf of the debtor is a modest one, it is nevertheless important as an initial step toward alleviating the distressed situation of the impoverished debtor. The Laws of Eshnunna begin a four-thousand-year history of legislation on interest-taking.

The series ana ittišu, a scribal school-book text preserved in the library of Ashurbanipal, gives some confirmation of what the Laws of Eshnunna reveal about the legal rate of interest. The series probably antedates the Code of Hammurabi and seems, from internal evidence,³² to contain material from late in the third millenium B. C. It is a collection of words, phrases and clauses extracted from contracts of the Old-Accadian and Old-Babylonian Periods. A fragmentary appendix gives the text of six laws relating to the repayment of loans. The work is not a law manual, but a text for the use of students in the law-schools in Nippur and for the guidance of scribes having to draw up contracts in both Sumerian and Accadian. While ana ittišu is very important for the interpretation of Babylonian legal documents, it must

³²Driver and Miles, The Babylonian Laws (henceforth, DM), I, p. 25.

be used with caution. It is a workbook, so that what appear to be connected legal texts may only be a patchwork. The compiler's objective was to teach legal terminology, not substantive law.

The extracts which follow shed some light on the legal aspects of interest-taking:³³

1. If he cannot pay money, then he shall measure out grain to him at the appointed time.
2. If he cannot pay grain, then he will add 1 PI 4 sutu per gur of grain as interest.
3. If he cannot pay money and the grain fails, he can pay grain and its interest in the following year.
4. If money is at hand, he will add 12 shekels per mina as interest.
5. If he cannot pay money, he will measure out 1 gur of grain for 1 shekel of silver.

The first prescription obviously refers to the case where the debtor is unable to pay off his loan with money. In this case he may pay it off in grain at the current rate. It is not clear from the text whether the debtor would pay the current rate for grain or for money. The latter is more likely since the loan was originally in money.³⁴ If the loan, therefore, was for 100 shekels, the interest due would be 20 shekels, and the money-lender would have to be satisfied with 20 shekels' worth of grain as interest. As shall be seen, the same prescription occurs in the Code of Hammurabi, #89.

The second prescription concerns the debtor's inability to pay off his loan in grain, but, more important, it confirms what the Laws of Eshnunna revealed about the rate of interest on grain. It states that the

³³ Landsberger, Die Serie ana ittisu, p. 105-106; cf. also, DM, II, 311-13.

³⁴ Landsberger, Die Serie ana ittisu (henceforth, DSAI), p. 115; DM, I, 177.

borrower shall add 1 PI and 4 sutu per gur of grain; this comes to 33 1/3%. The Code of Hammurabi, #88, also stipulates the same rate.

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The third prescription is not altogether clear. It seems to be a measure protecting the debtor in case of crop-failure, as in #48 of the Code of Hammurabi. If the crop fails, the debtor need not repay the loan or its interest until the following year.

The fourth prescription gives the rate of interest for loans of money. The borrower must pay 12 shekels per mina; that is, 20%.

The fifth prescription is rather interesting since it gives the standard rate of equation between money and grain. This fixed ratio, one gur of grain for one shekel of silver, was carefully maintained by Babylonian authorities as a safeguard for economic equilibrium.³⁶

Ana ittišu shows a rather sensitive concern for the problems of the debtor. Not only does it confirm that there were limitations on rates of interest, but it shows that there were concrete attempts at the end of the third millenium B.C. to help solve other problems that harrassed the impoverished debtor. If the debtor was unable to pay in money, he might do so in grain. If crops failed, he received a moratorium. To the extent that these practices were carried out, the plight of debtors was undoubtedly mitigated.

³⁵ DSAI, 106; cf. also, DM, II, 313.

³⁶ Cf. CH, #51; cf. also, W. F. Leemans, "The Rate of Interest in Old-Babylonian Times," Revue Internationale des Droits de l'Antiquité, 5 (1950), p. 29.

It would be false to conclude from these two sources, however, or from the Code of Hammurabi, which establishes the same rates, that the rate of interest became rigidly fixed in this period. Certain localities had different rates; mostly these were lower than the official legal rate (e.g., grain loans from the Temple of Sāmaš were at 20%).³⁷ Ana ittišu also mentions a local rate of 20% for grain. The commercial documents which will be examined later reveal wide variations, with many exorbitant rates.

Money-lenders, moreover, knew how to get around the law. The law concerning the rate of interest covered only the period from the loan-date until repayment. A greedy lender could set the date for repayment very early (thus making a short-term loan at the legal rate) and set a high penalty in case of default. The Assyrian colony at Kültepe shows such moratory rates ranging from 25% to 120%.³⁸ To circumvent the law, a money-lender could also evaluate a grain-loan in terms of silver. Borrowing ordinarily took place when prices were high (because of the scarcity) and repaying occurred when prices were low (because of the abundance created by the harvest), so that the lender (besides the interest he gained legally) could actually buy much more low-priced grain with the money repaid him than he had lent out originally when prices were high.

Having considered the Laws of Eshnunna and ana ittišu, an examination must now be made of the most complete extant treatment of loans at interest from the ancient Near East.

³⁷ Szlechter, p. 20

³⁸ Szlechter, p. 19.

The Code of Hammurabi (1728-1686) deals extensively with interest-taking and resultant problems. Though many of the prescriptions of the Code treat, at least indirectly, pledges, forfeitures and other aspects of credit transactions, discussion must be limited here to those stipulations which are proximately related to loans at interest. For convenience sake, each pertinent prescription will be presented, followed by some brief comments; at the end some conclusions will be drawn.

48. If a debt is outstanding against a seignior and Adad has inundated his field or a flood has ravaged (it) or through lack of water grain has not been produced in the field, he shall not make any return of grain to his creditor in that year; he shall ³⁹cancel his contract-tablet and he shall pay no interest for that year.

#48 treats the case where either a flood has swept away the top-soil or a drought has parched it. The crop in either situation has been ruined. The loan mentioned in the case is clearly one of grain or of money for buying grain. The farmer had taken out the loan so that he could plant his crop. Most likely he had gone to the local temple or palace, the chief loan-agencies in situations like this. According to the prescription, when the crop fails because of flood or drought, the debtor is excused from paying interest for the year (which, at 33 1/3%, was considerable). Naturally this provision was a boon to the poor debtor since it lessened the burden of the ever-threatening flood and drought, which in any event were a disaster to him.

49. When a seignior borrowed money from a merchant and pledged to the merchant a field prepared for grain or sesame, if he said to him, "Cultivate the field, then harvest (and) take the grain or sesame that

³⁹ANET, p. 163ff (transl. by T. J. Meek).

is produced," if the tenant has produced grain or sesame in the field, the owner of the field at harvest-time shall himself take the grain or sesame that was produced in the field and he shall give to the merchant grain for his money, which he borrowed from the merchant, together with its interest, and also for the cost of cultivation.

50. If he pledged a field planted with (grain) or a field planted with sesame, the owner of the field shall himself take the grain or sesame that was produced in the field and he shall pay back the money with its interest to the merchant.

51. If he does not have the money to pay back, (grain or) sesame at their market value in accordance with the ratio fixed by the king he shall give to the merchant for his money, which he borrowed from the merchant, together with its interest.

#49, 50, and 51 further show Hammurabi's concern for the distressed farmer. They deal with the case where a creditor takes over land which has been pledged for a loan and takes his payment from the crops he raises. Before Hammurabi's time, such a transaction provided that the creditor enter upon the land, grow the crops himself and keep whatever he might raise. This was an exorbitant form of usury since the field would ordinarily yield far more than the amount of the loan. Hammurabi, however, changed the transaction considerably in favor of the poor farmer. Now the creditor no longer takes the whole crop. The debtor receives the crop and repays the loan, the interest and the cost of cultivation; whatever is left over he keeps. In #49 the debtor pays in grain; in #50 he pays in money. #51 provides that, if he cannot obtain cash for his grain, he may pay off the loan in grain at the rate of exchange fixed by the king.⁴⁰

⁴⁰Cf. ana ittišu, #5.

66. When a seignior borrowed money from a merchant and his merchant foreclosed on him and he has nothing to pay (it) back, if he gave his orchard after pollination to the merchant and said to him, "Take for your money as many dates as there are produced in the orchard," that merchant shall not be allowed; the owner of the orchard shall himself take the dates that were produced in the orchard and repay the merchant for the money and its interest in accordance with the wording of his tablet and the owner of the orchard shall in turn take the remaining dates that were produced in the orchard.

#66 applies the principle from #49 to a slightly different case. It is clearer from #66 that Hammurabi is eliminating an exorbitant form of usury. The creditor may take only the profit originally agreed upon for the loan.

88. If a merchant (lent) grain at interest, he shall receive 100 qu of grain per kur as interest. If he lent money at interest, he shall receive one-sixth (shekel) six še (i.e., one-fifth shekel) per shekel of silver as interest.⁴¹

#88 lays down the legal rates of interest which a merchant may charge on loans of grain and money. Unfortunately the tablet is damaged at the very spot that is crucial for determining the rate on grain; the better reading, however, comes out to be 33 1/3% again.⁴² The rate for money is clearly 20%.⁴³ As mentioned in connection with the Laws of Eshnunna, the normal loan, which was connected with agriculture, would have run from seed-time to harvest. At that time the

⁴¹DM, I, 173, and Leemans, p. 8f., both show that the reading suggested by Meek (the text itself is damaged at this point) in ANET (p. 169) for the amount of interest on grain is very difficult to reconcile with data that can be gathered from contracts and other legal documents from this period. Here and in #90 the reading in DM, II, 39, has been followed.

⁴²Cf. note 41; also, cf. DM, I, 173.

⁴³1/6 shekel (30 grains) + 6 grains on every shekel. Since there are 180 grains in a shekel, this comes to 20%.

interest would be paid in a lump sum together with the capital. The charge of a higher rate of interest on grain may have something to do with seasonal variations in grain prices, but not enough information is available to allow a definitive judgment in the matter.⁴⁴

89. If a seignior, who (incurred) a debt, does not have the money to pay (it) back, but has the grain, (the merchant) shall take grain for his money (with its interest) in accordance with the ratio fixed by the king.

This prescription needs no commentary. It is much the same as #51 and ana ittišu, #5.

90. If the merchant increased the interest beyond (100 qu) per kur (of grain) (or) one-sixth (shekel) six še (per shekel of money) and has collected (it), he shall forfeit whatever he lent.

#90 provides that if the creditor takes more than the legal rate of interest "he shall forfeit everything he lent." This meant that the creditor lost both capital and interest, though the latter is not mentioned. Interest was thought of as "offspring," so that if the creditor lost the capital he lost everything.

91. If a merchant (lent) grain at interest and has collected money (for the full interest) on the grain, the grain along with the money may not (be charged to the account?).

In #91 the text is badly damaged. As a result, its meaning is not clear, but it seems to forbid a manipulation of the account by the creditor after interest has been paid on a loan. Finagling with accounts was a common device among usurers to increase their profits on loans; Hammurabi and later legislators were very cautious about the formalities of loan contracts and the honest keeping of records.

⁴⁴For a discussion of various opinions, cf. Leemans, p. 26-31.

93. If a merchant has given corn or silver on loan (and) has not taken the capital but takes the interest for so much corn (or silver) (as he has lent), whether he has then not caused so much corn (or silver) as he has received to be deducted and has not written a supplementary tablet or has then added the increments to the capital sum, that merchant must double so much corn (or silver) as he has taken and give (it) back.⁴⁵

The opening lines of the text are again damaged here. The paragraph deals with two offenses, the nature of which are not completely clear, and imposes a single penalty for them. It seems that a debtor has made partial repayment of a debt. In the first case the creditor has failed to draw up a new account so that he can profit by continuing to work from the old contract, which has already been partially paid. Exactly how this was done is not clear.⁴⁶ The second case deals with anatocism, a persistent abuse throughout the history of interest-taking. As shall be seen, anatocism will still be arousing strong public resentment in Greece and Rome a millenium and a half after Hammurabi. As the etymology of the word suggests, it simply means taking interest on interest. In the case at hand, the creditor makes up a new tablet after a partial payment and adds the unpaid interest to the capital. Under the conditions of the new tablet, the debtor will be paying interest not only on the capital that he has not paid, but also on the interest. Hammurabi imposes a penalty of double what the creditor has received improperly.

⁴⁵The fuller text suggested by DM, II, 4, has been used here.

⁴⁶Cf. E. Cuq, *Etudes sur le droit babylonien, les lois assyriens et lois hittites* (Paris: Librairie Orientaliste Paul Geuthner, 1929), p. 270-72; also, DM, II, 178-9.

94. If a merchant lent grain or money at interest and when he lent (it) at interest he paid out the money by the small weight and the grain by the small measure, but when he got (it) back he got the money by the (large) weight (and) the grain by the large measure, (that merchant shall forfeit) whatever he lent.

In #94 it is not entirely clear whether the text deals with one or two offences, but probably it is a simple case of using two measures:⁴⁷ a light one when giving out the loan and a heavy one when receiving it back with its interest. Mic. 6:10-11, Dt. 25:13-15 and Lev. 19:33-6 refer to the same problem among the Israelites. Through the double standard the usurer could increase his profits on a loan appreciably. Though the text concerning the penalty imposed is not totally clear, the creditor most likely forfeits the right to any repayment at all.

95. If (a merchant) has given (corn or silver) on loan without witness (or contract), he forfeits (what)soever he has given.⁴⁸

Because of damage to the text the reasons for the forfeiture in this case are not totally clear, but the offense is probably that the loan took place without witnesses or contract. The paragraph, then, stipulates that a man who lends without drawing up a written contract or without calling in witnesses has no legal right to the capital or the interest.⁴⁹ As mentioned above, usurers were not above falsifying contracts or records, nor were borrowers always quick to own up to their debts. Hammurabi is obviously aiming to impose certain formalities in order to forestall greater abuse.

⁴⁷For a discussion of the other possibility, cf. DM, I, 181-84.

⁴⁸The fuller text suggested by DM, II, 41, has been used here.

⁴⁹Interestingly, early Moslem law had a similar prescription. Cf. Koran, ii, 282.

96. If a seignior borrowed grain or money from a merchant and does not have the grain or money to pay (it) back, but has (other) goods, he shall give to his merchant whatever there is in his possession, (affirming) before witnesses that he will bring (it), while the merchant shall accept (it) without making any objections.

#96 employs the principle seen previously in #51 and #89, as well as in ana ittišu, #5. This time if the debtor cannot pay the loan in grain or in cash but has other movable goods which he can offer, the creditor must accept these. Witnesses must be present when repayment is made so that they can certify that other identifiable property has been handed over in place of what was originally agreed upon and that it has been accepted in satisfaction for the debt. It is interesting to note all the protective measures in this brief paragraph. The impoverished debtor may pay the money-lender from whatever assets he can gather. Witnesses must be present to attest that the debt has been paid, lest the usurer later claim that the contract was not fulfilled in specie. The lender must accept such payment. The standard rates of exchange would protect both parties from undue profit or loss.

#101-107 deal with credit transactions between a merchant and a trader. From the circumstances given in the prescriptions the merchant seems to be much more than a creditor, though he is that too. Beyond his loan, he has a considerable interest in the result of the trading. He is repaid at the end of the transaction, but in place of straight interest he takes a share in the profits. What proportion he takes and what the trader receives is not fixed by law and probably varied from contract to contract. The transaction, then, is both a credit-contract and a partnership. Since the prescriptions do not deal with pure loans,

what is pertinent in reference to interest-taking will be merely summarized here.

#101 needs little comment. It protects the money-lender against the negligence of the borrower; the latter must pay double if he fails to make a profit during the trading journey. This large penalty makes obvious how much of a profit the money-lender could expect from a partnership-loan of this type.

The next two paragraphs show Hammurabi's concern that in certain exceptional circumstances the borrower not be burdened with paying penalties, or interest, or even at times the capital.

#104 and #105 contain further prescriptions requiring formalities to guarantee against fraud. This has already been discussed briefly in connection with #95.

#106 and #107 specify penalties for fraud. Only the prescription in #107 is of direct concern here. The money-lender who seeks to multiply profit on his loans by denying receipt of payment must pay sixfold if convicted. This is by far the largest penalty that this author has found in regard to the seeking of unjust profit on a loan.

It would take this investigation too far astray to consider #113-119 individually here. The paragraphs give interesting details, however, on what a creditor may and may not take from the debtor when the latter fails to fulfill his obligations. The precautions taken by Hammurabi provide further evidence that the sale of persons into slavery (in this instance,

not the debtor himself but his family or slaves) was very wide-spread.

To summarize briefly: the Code of Hammurabi presents the most detailed extant legal treatment concerning loans at interest in the ancient Near East. The prescriptions of the Code clearly allow profit on a loan. They limit it, however, to 20% on loans of money and 33 1/3% on loans of grain. Further to protect the borrower against the greed of money-lenders, who were notorious for their avarice,⁵⁰ the Code provides for cessation of interest in case of crop-failure, new regulations concerning profit-making from pledged land, and penalties for excessive rates of interest. In addition, it forbids occult anatocism, imposes contractual formalities, and stipulates a series of penalties for various cases of fraud. Hammurabi's compilation of laws clearly seeks to better the condition of the debtor by limiting profits on loans and by checking the usurer's greed through a series of detailed enactments.

A final, rather unsatisfactory legal source concerning loans at interest in the ancient Near East is Bocchoris' law, from Egypt around the time of the twenty-fourth dynasty (c. 725-709). The law is known only through Diodorus of Sicily, who wrote in the first century A.D. and who was thus far removed from Bocchoris' time. Unfortunately no Egyptian sources have as yet been found which directly corroborate what

⁵⁰Cf. the Šamaš Hymn, in Lambert, p. 132-33.

Diodorus relates. He states that Bocchoris limited the accumulation of interest to double what was lent and restricted responsibility for debts to the goods of the debtor, excluding his person.⁵¹ As shall be seen, contracts from Egypt give some indirect confirmation of Diodorus' accuracy.

Having considered the legal prescriptions surrounding loans at interest, what is known of ancient Near-Eastern practice will now be examined. In view of the limitations of legal sources, as pointed out above, information from actual practice is extremely important if one is fully to understand the earliest evidence concerning attitudes toward usury. Previous studies of interest-taking in the ancient Near East suffered inescapably not only from a lack of knowledge of the legal sources which archaeology has uncovered over the last fifty years, but also from the dearth of private documents available to their authors.⁵² Today, in ever-increasing numbers, these documents are shedding light on ancient Near-Eastern practice.

⁵¹Diodore, *Bibl. hist.*, I, 79: τοὺς δὲ μετὰ συγγραφήν
δανείσαντας ἐκώλυε διὰ τοῦ τόκου τὸ κεφαλαῖον
πλείον ποιεῖν ἢ διπλάσιον . . . τὸ δὲ σῶμα
κατ' οὐδένα τρόπον εἶσεν ὑπάρχειν ἀγῶγιμον.

⁵²Johann Hejcl's work, *Das alttestamentliche Zinsverbot im Lichte der Ethnologischen Jurisprudenz sowie des altorientalischen Zinswesens* ("Biblische Studien," T. 12, f. 4), (Freiburg im Breisgau: Herder, 1907), while still cited as a standard source by R. deVaux, *Ancient Israel* (New York: McGraw-Hill, 1965), I, Biblio. xxxviii, and L.F. Hartman, "Loans," *Encyclopedic Dictionary of the Bible* (N.Y.: McGraw-Hill, 1963), 1361, and almost all other discussions of

2. Non-legal Sources

It has already been seen from the Laws of Eshnunna, ana ittišu, and the Code of Hammurabi that usury, or profit on a loan, was allowed, at least in Old-Babylonian times, but that the practice was hemmed in with many restrictions. It has also been shown that the legal rate of interest was generally 20% for loans of money and 33 1/3% for those of grain. Contracts concerning loans at interest provide evidence that usury was permitted not just in Old-Babylonian times, but quite generally throughout ancient Near-Eastern history, except in Israel. These documents also give a clearer picture of the restrictions surrounding actual commercial and private practice.

Frequent loans at interest are found as early as the third dynasty of Ur (c.2060-1950), especially in contracts from Nippur. Examination of these contracts shows that even at that time the usual rates were the later legal ones, though there was considerable variation both below and above them.⁵³

loans at interest, was extremely limited by lack of archaeological information. Obviously the Laws of Eshnunna, ana ittišu, and the greater part of the contractual evidence which shall be presented in the section on non-legal sources were not available to Hejcl; as a result, his work tends to rest on a priori arguments which more complete factual evidence will not support. Archaeologists are continually uncovering new evidence that throws light on the question. Even Leemans' very detailed article, "The Rate of Interest in Old-Babylonian Times," RIDA, 5 (1950), p. 7 - 34, was unable to take full account of the Laws of Eshnunna, whose publication the author evaluates briefly in a postscript.

⁵³ Leon Legrain (ed.), Ur Excavation Texts III: Business Documents of the Third Dynasty of Ur (British Museum and University of Pennsylvania, 1947), p. 193ff. Cf. texts #11, 34, 714-15, 742.

Among grain-loans some are supplied by private persons, such as the priestesses of Šamaš, or by other individuals in conjunction with a deity (that is, the temple). In these loans the rate is given in figures only on occasion. If stated, it is almost always 100 sila per gur, or 33 1/3%. At other times no figures are given, but the phrase maš gi.na ("standard interest") is included in the contract, especially in documents from Larsa. This also denotes a rate of 33 1/3%.⁵⁴

Besides those from private persons, other grain-loans come from the temple alone. In this case the interest is usually 60 sila per gur, or 20%. Though archaeologists have not uncovered a great number of these barley loans at 20%, the rate is constant in the temple-texts⁵⁵ that have been found and was most likely customary,

Also, among others, cf. C.E. Keiser, Selected Temple Documents of the Ur Dynasty ("Yale Oriental Series: Babylonian Texts IV"; New Haven: Yale Univ. Press, 1919), #1-55; 57-59; T. Fish, "The Sumerian City Nippur in the Period of the Third Dynasty of Ur," Iraq, 5 (1938), p. 157-179, esp. 162-64; H.H. Figulla and W. J. Martin, Ur Excavation Texts V: Letter and Documents of the Old-Babylonian Period (British Museum and University of Pennsylvania, 1953), esp. p. 325-56; T.B. Jones and J.W. Snyder, Sumerian Economic Texts from the Third Ur Dynasty (Minneapolis: Univ. of Minnesota Press, 1961), p. 251ff.; D.J. Wiseman, The Alalakh Tablets (London: The British Institute of Archaeology at Ankara, 1953), p. 2-3 and 40-47; R. Harris, "Old Babylonian Temple Loans," Journal of Cuneiform Studies, 14 (1960), p. 126-137.

⁵⁴For examples of loans from private persons, cf. J. Kohler and F.E. Peiser, Hammurabi's Gesetz (6 vols.; Leipzig: Edward Pfeiffer, 1904-23), III, #198; IV, #876; from priestesses of Šamaš, cf. III, #175; IV, #882; from a god and a private person, IV, #899.

⁵⁵Leemans, "The rate of interest...", p. 14.

since it is mentioned in ana ittišu,⁵⁶ as stated above, and in Babylonian mathematical texts.⁵⁷ Since such mathematical texts were generally used in the temple-schools, the rate of 20% would naturally have been used in problems if this was the customary rate for temple-loans.

When figures are given for loans in money, the usual rate is 20% (12 shekels per mina). Ordinarily, however, contracts simply contain the phrases "normal rate," "interest of Šamaš," "interest according to the city," etc. These usually refer to rates of 20%.⁵⁸

In summary, these contracts show that at the time of the third dynasty of Ur, just as in the time of Hammurabi, interest-taking was the accepted practice and that the customary rate on grain was 33 1/3% while that on money was 20%. These rates seem rather general in early Mesopotamia. The Code of Hammurabi, therefore, probably codified what was already the long-existing custom.⁵⁹

Rates of 33 1/3% and 20% for ancient Mesopotamia were not in themselves as outrageous as they sound. The economic system of Babylonia, even after the rise of the city-state, was based on agriculture, and the output, given good conditions (always the snag for the

⁵⁶ DSAI, tablet 2, I, 38-39.

⁵⁷ F. Thureau-Dangin, *Textes Mathématiques Babyloniens* (Leiden: Brill, 1938), p. 74 (TCL XVIII, 154^{ff}) and p. 118 (VAT 8528).

⁵⁸ Leemans, "The rate of interest...", p. 15f.

⁵⁹ It is, as mentioned above, uncertain why there was such a great difference between the rates for barley and money. For a discussion of the opinions, cf. Leemans, "The rate of interest...", p. 26-31.

debtor), was high. The yield of a quantity of corn sowed was probably thirty to forty times the original quantity. If the interest on a grain-loan was $33 \frac{1}{3}\%$ of the quantity to be sowed and the yield was approximately 35 times what was sowed, then the interest amounted to less than one percent of the total yield. Since most money-loans were involved with agriculture too and the output of borrowed silver depended on the harvest (which provided a huge yield if conditions were good), the same principles apply. But of course drought and flood were ever-imminent threats to any output at all, so that a natural calamity could leave the debtor helpless.

To gain deeper insight into actual practice in Mesopotamia, a few loan-texts will now be examined.

The fifth volume of the Ur Excavation Texts⁶⁰ furnishes examples of all sorts of loans from the Old-Babylonian Period, both with and without interest. Again, usury is taken as a matter of course. Generally the interest-rate on money, if the interest is mentioned, is 20%. #327, for example, provides for a loan of 13 shekels of silver, with interest of 12 shekels per mina (20%), from Puzur-sa-(d) Damu to Imgur-(d)Sin, to be repaid in Nisan. #328 is a loan of 15 shekels of silver, with interest of 12 shekels per mina, from Puzur-sa-(d)Damu to a company of 10 men, to be repaid in Airu. #340 records a loan of $\frac{2}{3}$ shekel at 20% interest from Niditum to Qum-(d)Sin and his wife (d)Gula-ummi, to be repaid after 15 days. There are, however, clear

⁶⁰H.H. Figulla and W.J. Martin, Ur Excavation Texts V: Letters and Documents of the Old-Babylonian Period (British Museum and Univ. of Pennsylvania, 1953), p. 12-16.

variations on the rate. #359 and #360, for example, demand 25% interest on money. Interestingly, most of the grain-loans in this collection do not impose interest, or impose it merely as a penalty for delay in repayment (cf., e.g., #387 and #388).

The fourth volume of the Yale Oriental Series: Babylonian Texts⁶¹ also provides a number of loan-texts. Where figures are given, the interest-rate on grain is consistently $33\frac{1}{3}\%$ (cf. #8, 26, 38, 43, 50) and that on money is 20% (cf. #28 and 59). Once more, usury, or profit on a loan, is evidently an accepted part of life.

From Nippur, in the period of the third dynasty of Ur, come examples which are interesting both for the rates charged and the details of the contracts. The formalities involved are an obvious witness to the legitimacy of usury.⁶²

6 gur of barley at interest, the rate $33\frac{1}{3}$ percent, from Lugalazide, Urnazinge received; to be repaid in the month sig₄-ga; he swore by the life of the king; five persons as witnesses; the month še-kin-kud, the ninth year of Bur-Sin.

1 1/2 shekels of silver at interest, rate of interest 1 shekel for every five, from Urnizingar Lugal-kagina has received itu kù-šim, 11th day inclusive; in the month sig₄-ga to be paid back...

Such contracts, as would be expected from the Code of Hammurabi, show interest-rates, oaths, witnesses, dates of giving and repaying, and probably installment plans.

The Alalakh Tablets are particularly noteworthy as witnesses to the oppressed condition of the impoverished debtor. They outline how the vizier of the overlord of the city gained control over Alalakh's

⁶¹Keiser, p. 45-46.

⁶²T. Fish, "The Sumerian City Nippur in the Period of the Third Dynasty of Ur," Iraq, 5 (1938), p. 162-64.

inhabitants through loans of small amounts of money.⁶³ Ammitaku, the vizier of Iarimlim, overlord of Alalakh, seems to have run the city for the most part. He increased his control over his subjects by making loans to individuals on security of the debtor himself, his wife, his son, or both his wife and sons. As surety they had to dwell in Ammitaku's household and work off the debt. If they escaped or died, the debt was transferred to a relative. Several of the loans in the series bear interest of 20% and 25% (cf. #35, 39, 40).

The temples were among the commonest creditors in ancient Babylonia.⁶⁴ The earliest extant temple-loans date from the Isin-Larsa Period (c. 20th century B.C.), with the bulk of the texts found so far coming from Hammurabi's time. In more than 80% of the temple loans the god Šamaš appears as the creditor; other gods and goddesses appear in scattered references. Usury is clearly the accepted practice, with the gods playing a key-role in the transactions. The Šamaš temple actually served as a kind of bank offering loans at interest for the Babylonians. Šamaš, the god of justice, took on the role of creditor par excellence. His very active part in the credit business contributed to the standardization of interest-rates, so that "the interest of Šamaš" became a repeatedly used phrase found, as already seen, in numerous loan-texts.

In many of the temple loans a human agent acts in conjunction with the god. In some cases it is certain that this agent is the Babylonian merchant, the ordinary private money-lender, but it is not clear what precise connection he had with temple loans.

⁶³ D. J. Wiseman, *The Alalakh Tablets* (London: The British Institute of Archaeology at Ankara, 1953), p. 2-3.

⁶⁴ For very numerous references, cf. R. Harris, "Old Babylonian Temple Loans," *Journal of Cuneiform Studies*, 14 (1960), p. 126-37.

The terms of temple-loans were mostly those common to loans in general. Temples outside Babylonia proper seem to have been no more magnanimous toward debtors than were private persons. The temples in the Diyala region charged the same interest-rates as private creditors did. In one Mari temple-loan the Šamaš temple even takes the debtor's wife as a pledge for the loan.⁶⁵ Temples in Babylonia proper, however, show greater concern with relieving the burden of the poor. As was pointed out above, the rate on grain-loans granted by these temples was 20%, as against the normal rate of 33 1/3%. There existed, moreover, a custom of offering food to the god from whom the loan was taken (and thus to his priests) in place of paying interest. Some of the temple-loans also favored the poor by allowing them to pay whenever they had money, instead of insisting on a definite date. A temple-loan from Sippar, for example, states:⁶⁶

...when Šamaš will give (the debtor) (enough) money, he (the debtor) will give it to him (Šamaš).

Contractual evidence from later periods of ancient Near-Eastern history helps to fill out what is known of attitudes toward interest-taking. Legal sources dealing with usury after Hammurabi's time are almost completely lacking, except in Israel, but contracts make it evident that Near-Eastern attitudes outside Israel changed little

⁶⁵G. Boyer (ed.) *Archives Royales de Mari* (Paris: Imprimerie Nationale, 1959), VIII, 31; cf. Harris, p. 132.

⁶⁶F. Thureau-Dangin, *Lettres et Contrats de l'Epoque de la Première Dynastie Babylonienne* (Paris: Paul Geuthner, 1910), I, 188; cf. also, Harris, p. 133.

through the Assyrian, Neo-Babylonian and Persian Periods. Unfortunately almost nothing can be said about usury under the Hittite Empire since the extant portions of Hittite Law do not treat the subject and there has been, up to the present, a dearth of private documents in the diggings at Bogazköy.

The Nimrud tablets,⁶⁷ discovered in 1952, give details about loans at interest during the Assyrian Empire. The largest group of tablets, from around the year 658, deals with loans of grain and silver. The loans are both with and without interest, but again usury is clearly legitimate practice. In the case of silver the rate normally given is 25%. The rate for grain is usually 5 sūtu per homer, or 50%. As in ancient Babylonia the higher rate for grain may well have something to do with the seasonal variation in prices. Grain was likely to be repaid at the harvest when its price was lowest (cf. ND. 2083, 2302, and 2321, which, since the threshing-floor is mentioned as the place of repayment, suggest that the debts were to be satisfied at harvest-time). The prescriptions of many of the loans indicate conditions similar to those seen previously. In ND. 2333 silver is loaned without interest, but the son of the debtor must serve the creditor for a year. In ND. 2078 a field is probably given in place of interest. ND. 2080 shows a temple-loan with Šamaš as witness; interest is to be paid only if repayment is delayed. Another loan from the Temple of Ishtar (ND. 2336)

⁶⁷B. Parker, "The Nimrud Tablets, 1952: Business Documents," Iraq, 16 (1954), p. 29-58.

charges 25% on silver, the standard rate for money-loans under the Assyrian Empire.

In the Neo-Babylonian Period usury is clearly an accepted, and very common, practice. The legal rate for both grain and money, as indicated in extant contracts, is usually 20%.⁶⁸ There are indications of a movement to lower the rate on money toward the end of the reign of Nabopolassar (625-605), and under his successor, Nebuchadnezzar (605-561), it does drop to 10%, at least temporarily.⁶⁹ In general, however, during Neo-Babylonian times the legal maximum was probably 20%. Usually creditors charged the maximum, with the normal variations here as elsewhere.

For this period there exists, as contained in the Ur Excavation Texts,⁷⁰ a series of 35 documents involving a man named Sin-uballit. Seventeen of these are loans, all contracted between the fourth and ninth year of Nabopolassar while Sin-uballit was living in Babylon (except for #2 which is marked "at Dilbat"). Fortunately for the study of loans at interest, Sin-uballit's loans, along with other contracts from the Ur texts, show wide circumstantial variations. They give a picture of how commonly accepted a practice profiting on loans was, and provide details on charge of

⁶⁸G. Cardascia, "Documents Babylonniens des 8^{me} et 7^{me} Siècles," RIDA, 1 (1954), p. 101-117; cf. p. 115-16.

⁶⁹Cardascia, p. 116.

⁷⁰H. H. Figulla, Ur Excavation Texts IV: Business Documents of the New Babylonian Period (British Museum and the University of Pennsylvania, 1949), p. 7-8.

the legal rate, charge of exorbitant rates, substitution of other conditions in place of interest, seizure of pledges, human servitude, and other practices typical of Near-Eastern loan-transactions.⁷¹

The Persian conquerors did not disturb Babylon's economy. Interest rates under the new empire continued at 20% Private banking, already flourishing during the Neo-Babylonian Period, knew a great upsurge under the Persians, with a consequent wide extension of

⁷¹An abridged version of the details of Sin-uballit's contracts follows (the dates given are the day, month and year of Nabopolassar):

1. On 15.4.4, a loan of 52 šiqu is taken from Šarid, son of Sin-bel-zeri, in Babylon, without interest;
2. On 17.5.4, 42 šiqu from Bel-ahe-erba, son of Bel-iddin, in Babylon, free of interest until the end of Ulul;
3. On 7.7.4, 45 šiqu from Sin-bel-zeri, until the 20th of the month, in Babylon; unless he pays back his debt on that day, he has to hand over his slavegirl, who is a singer, as a pledge; no other demand for interest is made;
4. On 4.12.4, 10 šiqu from Bel-uballit, in Babylon, again with no interest;
5. On 5.3.5, 6 1/3 šiqu from Rimut, in Babylon, no interest;
6. On 6.6.5, 50 šiqu from Šarid, in Babylon, 20 (or 24)% interest;
7. On 3.1.6, 1 mana from Ugarai; for 1/2 mana Pan-Ningal-lumur is pledged, for the second 1/2 mana he pays 20% interest;
8. On 29.2.6, 1 mana from Aplā; there is no interest, but Pan-Ningal-lumur is again pledged (note the connection between this debt and #11);
9. On 21.5.6, 1 mana 15 šiqu from Marduk-erba, in Babylon, with no interest, but with the pledge of a field in Ur;

credit.⁷² The Murašū family, which played an important role in the economic life of Nippur from 455-403, were powerful creditors. Their

10. On 8.6.6, 1 mana from Apla, in Babylon at 30% interest;

11. On 10.6.6, 1 mana from Apla, in Babylon; for 2/3 of the mana Pan-Ningal-lumur is pledged, for 1/3 he must pay 20% starting at the first of the next month; this time the girl is not at Sin-uballit's disposal; apparently she was not returned after the debt of 29.2.6, and Erišu, probably Sin-uballit's cousin, has laid hands on her; on the same day, therefore, (10.6.6) he demands the girl (cf. #197) from Erišu claiming high daily pay for her unless she is returned;

12. On 26.8.6, 1/2 mana from his grandfather; Pan-Ningal-lumur is the pledge;

13. On 28.12.6, 1 mana from Ittina, in Babylon; this time another slave girl, Istar-Ur-attan, is the pledge for 1/2 the loan;

14. On 21.2.7, 1/2 mana from 2 men in Babylon; the debt is payable on 15.4 with 2 šiqu of interest (45%); after that date the interest will be 20%;

15. On 9.12.6, 14 šiqu from Bel-ahe-erba and Apla, at (al) Šapiia, payable on 20.12 in Babylon without interest;

16. On 1.9.9, 1/2 mana from Pir'u, in Babylon; the interest is 20% and a garden is pledged;

17. On 5.11.9, 1 mana from Mušezib-Marduk, in Babylon; Sin-uballit's wife puts her handmaid Ningalrimanninni as pledge in the hands of the creditor; unless the debt is repaid on 1.2 (next year), the pledge is forfeited against a further payment of 10 šiqu on the part of the creditor.

⁷²
A. T. Olmstead, *History of the Persian Empire* (Chicago: Univ. of Chicago Press, 1948), p. 77-83.

archives, discovered in 1893, reveal a thriving finance operation.

Most of the debts recorded in the Murašû contracts concern loans of dates. A few money-loans,⁷³ however, show interest accumulating only after a prescribed future date, and then at the high rate of 3 1/3% monthly (40% a year).⁷⁴

Most material concerning loans at interest in Egypt is late. Bocchoris' law has already been discussed. It limited interest-accumulation to double the sum of the loan and limited responsibility to the debtor's goods, excluding his person. Under Egyptian law during the Saite (663-525) and Persian (525-401) Periods, usury went on as usual. A loan from the twenty-fourth year of the reign of Darius I stipulates that interest may mount no higher than the capital;⁷⁵ it thus provides some evidence for the accuracy of Diodorus' account of Bocchoris' law. It prescribes, in addition, that the pledge may be seized if the interest and capital are not paid. Another papyrus shows interest as a penalty if the loan is not repaid before a stated date.⁷⁶

⁷³G. Cardascia, *Les archives des Murashû. Une famille d'hommes d'affaires à l'époque perse (455-403 a. J.-C.)*, (Paris: Imprimerie Nationale, 1951), p. 28, 47-48, 59.

⁷⁴Interestingly, the later Sassanid Avesta, which probably took its definitive form only under Shapur II (309-79 A.D.), but which is valuable as a reflection of much earlier traditions from the Achaemenid Period (539-331 B.C.), contained moral prescriptions on interest. Unfortunately only a small fragment is preserved. Under Sassanid law it was permitted to ask interest on loans, but it was considered better not to, especially in loans to the poor. Anatocism was also forbidden. If a mazdean had capital to lend, he could ask only 25% interest; his profit was to be used for the support of his wife and family. Cf. Seyyed Taghi Nasr, *Essai sur l'Histoire du Droit Persan dès l'origine à l'invasion arabe* (Paris: Editions Albert Mecheleink, 1933), p. 98 and 338.

⁷⁵Erwin Seidl, *Ägyptische Rechtsgeschichte der Saiten-und Perserzeit* ("Ägyptologische Forschungen," Heft 20), (N.Y.: J.J. Augustin, 1956), p. 57.

⁷⁶*ibid.*

Hellenistic law in Egypt allowed loans with and without interest. The papyri show great variation in interest-rates, from nil to 50%. The legal rate, however, was 2% a month (24% a year) throughout the Ptolemaic Period (323-20 B.C.).⁷⁷ An interesting letter from the Zenon Papyri shows a debtor pleading with the king to intervene on his behalf against an avaricious creditor.⁷⁸

To King Ptolemy greeting from Antipatros, resident of Philadelphia. I am being wronged by Nikon. For having loaned seventy silver drachmas to my wife Simon at an interest of six drachmas per mina each month (72% a year) and having totaled (the interest) with the principal he drew up a contract of loan with her for 115 drachmas in which I myself was entered as security.

(A detailed account explains how Nikon had seized Antipatros' wife and sons as a pledge. The wife escaped, but the son still remains in Nikon's custody. The letter concludes:)

I beg you therefore, O King, to send my petition to the *chrematistai*, and if I prove that the allegations set forth in the petition are true, I beg that Nikon may meet with fitting punishment both in the matter of the interest which he has contracted for contrary to the ordinance and because by his own authority he has placed in detention and holds (the boy), a free person; and I beg that the boy be restored to me in order that I, having fled to you for help, O King, may meet with justice.

Practice in Ptolemaic Egypt, prescinding from the rate of interest, followed Greek norms for the most part, especially in what concerns maritime loans, the *ἡμιόλιον* as a penalty, and the *ἐσπάραι* societies. The particulars will be considered in connection with attitudes toward loans at

⁷⁷M.R. Taubenschlag, *The Law of Greco-Roman Egypt in the Light of the Papyri, 332 B.C. - 640 A.D.* (New York: Herald Square Press, 1944), p. 260.

⁷⁸W.L. Westermann, C.W. Keyes, and H. Liebesny, *Zenon Papyri* (New York: Columbia Univ. Press, 1934), II, #83 (p. 75-86).

interest in Greece. Of note here, however, regarding the *ἐσπῶροι* (societies providing collective loans free of interest), is a letter from the Zenon Papyri, the richest source for studying loans in Egypt. It is a letter of recommendation written about 254 B.C. by a certain Phileas to Zenon. Some of Phileas' friends have asked him to write on behalf of Metrodoros, who needs a loan. Phileas requests that Zenon make up a free collective loan for Metrodoros. The final sentence marks Metrodoros as a man of honor, probably one of the ruling Hellenes, who will certainly repay the *ἐσπῶρος*.⁷⁹

Phileas to Zenon, greeting. Certain of my acquaintances have come to me in behalf of Metrodoros, the man who is handing this letter to you, requesting me to write to you. You will, therefore, do me a favor by making him a collective loan from yourself and your acquaintances. It will be clear to you what sort of man he is from his dress.

The *ἐσπῶρος* will be considered in detail later. It is sufficient here to note that free loans of this type were held in high esteem throughout the Hellenistic Period and were always regarded as preferable to loans at interest.

The results of our study of non-legal sources can now be briefly summarized.

Numerous contracts confirm that loans at interest were permitted, with restrictions, throughout the ancient Near East, except in Israel. In the

⁷⁹W.L. Westermann and E.S. Hasenoeherl, Zenon Papyri (New York: Columbia Univ. Press, 1934), I, #41 (p. 103-04).

Old-Babylonian Period the legal maximum was 20% for money and 33 1/3% for grain. It is clear that the temples were among the most common creditors. Some temples, at least in Babylon, took steps to help alleviate the burden that loans at interest imposed on the poor. In Assyria the normal rate of interest under the empire was 25% for money and as high as 50% for grain. During Neo-Babylonian times and later under the Persian Empire the legal rate on both silver and grain was generally 20%. In Egypt we find some indirect confirmation of Bocchoris' law, limiting accumulation of interest. The legal maximum there under the Ptolemies was 24% a year. There are abundant examples of loans with and without interest from every period, and, needless to say, abundant examples of exorbitant interest-taking.

Having studied both legal and non-legal sources outside Israel, it is important, before turning to the Old Testament teaching on usury, to say a few words about the concept of law presumed in the documents so far discussed.

For men formed in a society which is profoundly influenced by Roman Law and classical logic the "codes" of the ancient Near East seem a hodge-podge. One expects clearly defined concepts and general principles, followed by particular prescriptions which proceed from the principles more or less after the manner of a syllogism. In solving a case one looks for the application of a general law to particular circumstances, with a **solution** resulting by way of deduction, or (as with Anglo-American common law) some appeal to precedents, at least where these may be found.

But such consistency is foreign to the "codes" discussed so far. These "codes" contain few general rules, no abstract definitions, no strictly logical plan. There are repetitions,⁸⁰ lacunae, and even contradictions.⁸¹ It would, of course, be excessive to deny any similarity between Near-Eastern law and Roman Law or Anglo-American common law. In a pre-propositional way there are necessarily definitions, general principles and logic of a sort, but their embodiment in legal form and their use in judicial decision is certainly other than what western man is accustomed to expect.

An ancient code, like Hammurabi's, was not looked upon as a group of formal rules proceeding from the positive will of the legislator. Rather, it contained practical applications of transcendent principles of social morality.⁸² The code is seen as proceeding from god. A codifier like Hammurabi is only its divinely chosen interpreter. It contains one practical case after another, but leaves general principles which are applicable to several similar cases implicit.

⁸⁰Cf. CH, #49 and 66; #51 and 89.

⁸¹Cf. CH, #7 and 123; #6, 8, and 10.

⁸²Boyer, p. 6; cf. the modern debate on the nature of law, as discussed, e.g., in H. L. A. Hart, "Positivism and the Separation of Law and Morals," Harvard Law Review, 71 (1957-58), p. 593-629, and L. L. Fuller, "Positivism and Fidelity to Law---A Reply to Professor Hart," Harvard Law Review, 71 (1957-58), p. 630-72.

Ancient Near-Eastern law is therefore not so much a science as an art,⁸³ enabling the jurist to resolve practical daily problems. He does not deduce his conclusions from abstract principles or appeal to precedents in judge-made law. Rather, the code sets before him concrete hypotheses taken from reality and indicative of a solution.⁸⁴ The jurist discerns which circumstances are the same, which are different, which have a bearing on the solution of the case, which do not. Then he makes a decision. This legal method, in which a constant factor (e.g., a fugitive slave) is examined in successive cases with varying circumstances, is evident not just in the codes mentioned above, but also in ana ittišu,⁸⁵ where lists of circumstances modifying cases are provided for students. For the jurist using the method, the legal prescriptions are exemplars. The general rules which inspired them remain implicit in the more or less large number of cases and decisions given in a code.

⁸³ Benjamin Cardozo describes the modern judge's task similarly (but in the narrower context of legislating between the gaps in law) in his famous work, *The Nature of the Juridical Process* (New Haven: Yale University Press, 1921), p. 113-114: "He legislates only between gaps. He fills the open spaces in the law. How far he may go without traveling beyond the walls of the interstices cannot be staked out for him upon a chart. He must learn it for himself as he gains the sense of fitness and proportion that comes with years of habitude in the practice of an art."

⁸⁴ Cf., e.g., CH, #15-20.

⁸⁵ Cf. DSAI, tablet 7, col. II and III.

When one considers that the prescriptions in a code contain practical cases occurring over a rather extensive period of time (perhaps 500 years), it becomes evident that the solutions arrived at may not be totally consistent because of changing attitudes and social conditions from one age (or also from one place) to another. The ancient codifier apparently did not judge it necessary, as later legislators would, to guarantee complete harmony within his code. This position is reasonable enough when his laws are seen as exemplars to be used by the judge in forming a decision. A wealth of examples would be helpful to the judge even if they might involve principles which are not totally reconcilable.

Nowhere in the contracts and letters of ancient Babylon does one find appeals to the laws to justify decisions, as today one might expect an appeal to a canon or a statute.⁸⁶ Though Hammurabi presents his code with a great deal of rhetoric, he does not (strangely, in our view) demand that judges make their decisions according to his laws. The reader looks in vain through Babylonian documents to find expressions like "broke the law," "observed the law," "condemned according to the law of..."⁸⁷ Judges were certainly well aware of the laws, but using them as exemplars they made their decisions according to their repeatedly praised honesty and justice.

⁸⁶ B. Landsberger, "Die Babylonischen Termini für Gesetz und Recht," *Symbolae ad iura orientis antiqui pertinentes Paulo Koschaker dedicatae* (Leiden: Brill, 1939), p. 232.

⁸⁷ *Ibid.*, p. 220.

To put the matter plainly, the laws which have been discussed are just not "laws" in the modern sense.⁸⁸ The concept of a written binding law-code seems completely lacking in ancient Mesopotamian law.⁸⁹ Judges did not arrive at their decisions by interpreting and applying a formal authoritative law-code or by using a working rule of stare decisis.⁹⁰ This was evidently the case in Israel also, at least before the Exile, where legal tradition developed and changed as varying conditions of time and place modified it.⁹¹

Antecedent to the Babylonian law-codes legal traditions existed in the scattered city-states. They told not so much what the courts said as what they did. They varied from place to place. Codes probably had as their main function to describe the legal tradition regarded as standard by the promulgator, who was often a reformer. They did not in fact, however, replace earlier traditions; nor, apparently, were they intended to do so. They simply described a legal tradition

⁸⁸For a discussion of current views on the definition of law, cf. Hart and Fuller, art. cit.; esp., Fuller, p. 633f.

⁸⁹Mendenhall, p. 9; cf. also, Landsberger, "Die Babylonischen...", p. 223.

⁹⁰Cf. Cardozo, p. 20

⁹¹Walther Eichrodt, Theology of the Old Testament, translated by J.A. Baker (2 vols.; Phila.: Westminster, 1961-66), I, p. 73-74; Gerhard von Rad, Old Testament Theology, translated by D.M.G. Stalker (2 vols.; N.Y.: Harper and Row, 1962), II, p. 394; Mendenhall, p. 9.

which rested on earlier collections.⁹² As such they were rather flexible.

As will be pointed out in the next chapter, Israelite law shared in this flexibility. Because of her covenant with Yahweh, Israel was certainly faced with stern demands on her conduct. But her law was not an unchanging quantity. It was modified by time and circumstance. It grew through experience, through judicial decisions and practical necessity.⁹³ It was interpreted and reinterpreted by generation after generation in the light of the changing political, economic and religious situation.⁹⁴

In the history of Israel's cult, for example, constantly changing dangers forced here to reinterpret the first and second commandments in order to meet the problems which surrounding religions posed.⁹⁵ One age tolerated certain customs; another sternly rejected them. Dt. 12:2ff., to cite an instance, utterly rejects cult-places outside Jerusalem; yet this Deuteronomic tendency toward exclusiveness is clearly not typical of earlier periods in Israel's history. Deuteronomy, after which law has

⁹² Cf. deVaux, I, p. 146; Mendenhall, p. 11.

⁹³ Von Rad, II, p. 394.

⁹⁴ Cf. the similar process involved in the interpretation and reinterpretation of American constitutional law, as described in Cardozo, p. 76f.

⁹⁵ Von Rad, I, p. 203ff.

a marked tendency to become more static, is itself an attempt at actualizing Yahweh's will in regard to specific dangers which arose at a definite period in Israel's history. It is reinterpretation. It faces the here and now and takes a stance toward it.⁹⁶

For a great part of its history, Israelite law shows much of the flexibility that characterizes other ancient codes.⁹⁷

⁹⁶ Mendenhall, p. 19-20, suggests an interesting illustration of the flexibility of Israelite legal tradition in regard to loans. The old tradition, he maintains, knew only the pledge as security for a loan (cf. Ex. 22:25). A borrower would, for example, give a piece of property to his creditor to be held until the debt was satisfied. In case of default the creditor simply took the property as his own. It was clearly forbidden (cf. Ex. 22:24f.) to be a "creditor" toward one's fellow-Israelite (i.e., to be like the money-merchant who lent at interest and was notorious for seizure of the persons of his debtors). But in I Sam. 22:2 one finds among the outlaws gathered around David those who had "creditors" and who therefore had to flee. Under the old pledge-system, fleeing would hardly have made sense. The situation represented here is rather that which was common in Babylonia (and which was also to be common in Greece before Solon's *seisachtheia*). Bodily seizure was taking place. The debtor's practical alternative was to flee (one of Solon's immediate aims in Greece was to bring back those who had fled Athens because of debts). The prophets inveighed against the practice (cf. Amos 2:6; Mic. 2:1-2) since it was in total contradiction to Israel's obligations as Yahweh's people. The later law-codes, however, tried to harmonize the needs of business and early tradition. With an advancing commercial economy the pledge-system must have proved inadequate. Besides, if the person of the debtor had to be protected, so also must the rights of the creditor. Deuteronomy and Leviticus, therefore, presume bodily liability (cf. Dt. 15:13-14; Lev. 25:39-43) and merely demand that the debtor be treated humanely. The later tradition has obviously compromised on the absoluteness of the earlier prohibition; yet it has come to grips with a reality of the changing times and has sought at least to rescue the human values at stake.

⁹⁷ It would be a mistake to oversimplify in comparing Israelite law with other ancient oriental codes. There are notable

While generally it uses its data modestly and does not engage in the extensive casuistry of the Code of Hammurabi or the Assyrian Code, it often leaves application to concrete instances to a sense of justice. It is sensitive to the need for a living feeling for the demands of Yahweh's covenant.

Like the interpretation of Hebrew history, the transmission of Israelite law is a living thing, capable of adaptation to changing conditions. The bearers of legal tradition did not feel themselves restricted to handing on the letter of the law. They did not feel bound rigidly to single formulations. They did not regard each statute as having intrinsically inviolable force. Consequently, they shaped individual prescriptions to the needs of time and place.

The Old Testament prohibitions of interest-taking manifest the historical flexibility of ancient Near-Eastern law. The prohibitions are concrete.⁹⁸ They are not universal. They allow differing cases to be posed and further questions to be asked. Some cases explicate the prohibition: not money, nor food, nor anything else;⁹⁹

differences between the two. For example, the Hebrews refer their entire law to Yahweh. While the Code of Hammurabi is referred to Šamaš in the prologue and epilogue, the god is silent within the body of the code, and it is obviously the human law-giver who speaks. Secondly, Israelite law brings together moral action and the worship of God in a manner lacking in other codes. Thirdly, it is more humane, especially in matters like the death penalty, mutilation, slavery, etc. It rejects class distinction in the administration of justice. It shows a more elevated moral sense in the treatment of sex, etc. Cf. Eichrodt, I, 74ff.; also, DeVaux, I, 148.

⁹⁸Ex. 22:24; Dt. 23:20-21; Lev. 25:35.

⁹⁹Dt. 23:20-21.

neither from your fellow Israelite¹⁰⁰ nor from the ger.¹⁰¹ Another case
limits the prohibition: you may take interest from the nokri.¹⁰² Still
other questions remain unasked: what of the Israelite merchant who
borrows to finance business ventures? what of the rich who borrow
to invest?

The Old Testament attitude toward usury must now be ex-
amined in detail.

¹⁰⁰Ex. 22:24.

¹⁰¹Lev. 25:35.

¹⁰²Dt. 23:20-21.

CHAPTER II
THE OLD TESTAMENT TEACHING
ON USURY

"There ought to be no poor man in your midst," Deuteronomy proclaimed.¹ Yet poor there were.

In ancient Israel as today, the small farmer often found himself in want. If the harvest failed, he lacked food for his family and grain for the next seeding. If drought parched the earth or locusts devoured the crops, he had to abandon himself to the charity of his brother-Israelites or to the greed of the local money-lender.

The law recognized that there would always be poor in Israel. Repeatedly it called for special consideration for them.² They had a right to a portion of the land's fruits.³ For their sake the landowner should leave gleanings in the field.⁴ They should receive profitable work⁵ and a tithe every third year.⁶ During the sabbatical

¹ Dt. 15:4.

² Dt. 10:18; 15:11; 24:17; Ex. 22:21-26.

³ Lev. 19:9-10; Dt. 24:19-21.

⁴ Dt. 24:19; Ruth 2:2.

⁵ Lev. 25:35.

⁶ Dt. 14:28-29; 26:12.

year they had first claim to what grew in the fields.⁷

The true Israelite lent generously to the poor.⁸ He did not force his debtor to pay at an unseasonable time.⁹ He asked nothing during a sabbatical year, when the poor man could receive no returns from his fields and could not easily find labor.¹⁰ He oppressed no one, did not appropriate another's goods, donated his bread to the hungry and his clothes to the naked.¹¹ He accepted no interest.¹² "Whoever has pity on the poor lends to Yahweh, and he will compensate him for his kindness."¹³

As surety the Israelite must not take articles which his debtor needed for his livelihood.¹⁴ If he took the poor man's mantle, he must return it by evening.¹⁵ If he stopped his ears to the poor man's cry, one day he himself would cry out and receive no answer.¹⁶

⁷ Ex. 23:11; Lev. 25:6. For an excellent bibliography and a detailed treatment of legislation connected with the Jubilee, cf. R.G. North, Sociology of the Biblical Jubilee (Rome: Pontifical Biblical Institute, 1954).

⁸ Ps. 37:21; 112:5; Sir. 29:1-2.

⁹ Ex. 22:24.

¹⁰ Dt. 15:1-5.

¹¹ Ez. 18:7-8, 16-17.

¹² Ex. 22:24; Dt. 23:20-21; Lev. 25:35-38.

¹³ Prov. 19:17.

¹⁴ Dt. 24:6.

¹⁵ Ex. 22:25-26; Dt. 24:10-13.

¹⁶ Prov. 21:13.

Society severely condemned the greedy money-lender.¹⁷
He had increased his wealth by exploiting the poor.¹⁸ He was the
antithesis of the righteous man.¹⁹ His dealings were an abomination.²⁰
He would bring down Yahweh's wrath on Jerusalem.²¹

Israel's laws considered the debtor a victim of misfortune.
His distress was a judgment of his nation's sin.²² To take interest
from him was to extort unjust profit, to do the unspeakable, to make
gain through violence.²³ It was as bad as bribery.²⁴

The right of the creditor to seize the debtor, his family
and his property provided an obvious occasion for abuse. It be-
came a proverb that "a borrower is a slave of the man who lends."²⁵
The law sought to protect the seized debtor from oppression.²⁶ It
exempted the widow and the fatherless from such a fate.²⁷ It provided
for the freeing of the debtor in the sabbatical year.²⁸

Yet in spite of prohibitions abuses continued, especially
lending at interest. The prophets inveighed against it time and again.²⁹

¹⁷ Cf. Jer. 15:10.

¹⁸ Ez. 22:12; Prov. 28:8.

¹⁹ Ez. 18:8; Ps. 15:5.

²⁰ Ez. 18:13.

²¹ Ez. 22:12.

²² Dt. 15:16; 28:12, 44.

²³ Ez. 18:8, 13, 17; 22:2.

²⁴ Ez. 22:12; Ps. 15:5.

²⁵ Prov. 22:7.

²⁶ Lev. 25:39-43; Dt. 15:12-14.

²⁷ Dt. 24:17, 19, 21, etc.; Is. 10:2.

²⁸ Ex. 21:2; Dt. 15:1ff.

²⁹ Is. 1:17; Jer. 15:10; 35:9-16; Ez. 18:8, 13, 17; 22:12; Amos 2:8.

So rampant was interest-taking that the usurer became a social type, ever present but despised.³⁰

But the ideal remained: the righteous man gives generously, without demanding interest;³¹ Yahweh blesses the almsgiver, so that he never becomes poor himself;³² the virtuous housewife stretches out her hand to the poor and extends her arm to the needy;³³ the just man does not put the poor man off until tomorrow when he can lend him help today.³⁴ The elder Tobias recommended to his son to give alms even when in want.³⁵ Ben Sirach counseled the Israelite to lend even though the needy be ungrateful, though they neglect to repay, though they become abusive.³⁶

³⁷ Israel considered herself a brotherhood with Yahweh as father and creator. Obviously no man lends at interest to his brother³⁸ or oppresses his father's son.

³⁰Is. 24:2; Ps. 109:11; cf. Job 22:6; 24:3, 7; Neh. 5:3-5.

³¹Ps. 15:5.

³²Prov. 11:24.

³³Prov. 31:20.

³⁴Prov. 3:28; Sir. 4:1-10.

³⁵Tob. 4:7-11, 14, 16; cf. Job 29:12-13; 31:16-21.

³⁶Sir. 29:1-13.

³⁷Job 31:15; Mal. 2:10.

³⁸Dt. 23:21.

Usury was not an abstract problem for Israel. There were poor among God's people. Money-lending was common, and taking interest was seen as just one more means of oppressing a brother, as the prophets continually remind their readers. Amos writes:

Thus says the Lord;
"For three transgressions of Israel
and for four, I will not revoke the punishment;
because they sell the righteous for silver,
and the needy for a pair of shoes---
they that trample the head of the poor into the dust
of the earth,
and turn aside the way of the afflicted;
a man and his father go in to the same maiden,
so that my holy name is profaned;
they lay themselves down beside every altar
upon garments taken in pledge;
and in the house of their God they drink ³⁹
the wine of those who have been fined.

Credit-slavery became an obvious occasion of abuse; yet it was common in Israel as in the rest of the ancient Near East.

The word of the Lord came to Jeremiah from the Lord:
"Thus says the Lord, the God of Israel: I made a covenant with your fathers when I brought them out of the land of Egypt, out of the house of bondage, saying, 'At the end of six years each of you must set free the fellow-Hebrew who has been sold to you and has served you six years; you must set him free from your service.' But your fathers did not listen to me or incline their ears to me. You recently repented and did what was right in my eyes by proclaiming liberty, each to his neighbor, and you made a covenant before me in the house which is called by my name; but then you turned around and profaned my name when each of you took back his male and female slave, whom you had set free according to their desire, and you brought them into subjection to be your slaves."⁴⁰

³⁹ Amos 2:6-8.

⁴⁰ Jer. 34:12-17.

In its concern for the poor of the land, Israel's ideal became clear. "It is well for the man who is a gracious lender, who conducts his business with justice; for he will never be shaken."⁴¹ "He is always gracious and ever lending, and his descendants become a blessing."⁴² "He does not lend his money out at interest, nor take a bribe against the innocent."⁴³ "The man who shows mercy will lend to his neighbor, and the man who takes him by the hand keeps the commandments. Lend to your neighbor when he is in need... be patient with a poor man, and do not make him wait for charity. For the commandment's sake help the needy man, and, in view of his need, do not send him away unsatisfied. Lose your money for the sake of a brother or a friend, and do not let it rust to ruin under a stone. Lay up your treasure according to the commandments of the Most High, and it will be more profitable to you than gold."⁴⁴

Conscious of Israel's identity as God's People, conscious of the poor in Israel's midst, the Old Testament took steps to better the lot of the needy. It sought, like other ancient legislative works,

⁴¹ Ps. 112:5-6.

⁴² Ps. 37:26.

⁴³ Ps. 15:5.

⁴⁴ Sir. 29:1-2, 9-11.

to limit the power of creditors.⁴⁵ It proclaimed the sabbatical year, when fields would lie fallow and the poor could glean in them,⁴⁶ when slaves would be set free⁴⁷ and debts would be remitted. It enacted the Jubilee,⁴⁸ when liberty would be announced to all Israel's inhabitants, when each would return to his own family and receive back his own possessions. It encouraged open-handed lending.

If there is among you a poor man, one of your brethren, in any of your towns within your land which the Lord your God gives you, you shall not harden your heart or shut your hand against your poor brother, but you shall open your hand to him, and lend him sufficient for his need, whatever it may be. Take heed lest there be a base thought in your heart, and you say, "The seventh year, the year of release is near," and your eye be hostile to your poor brother, and you give him nothing, and he cry to the Lord against you, and it be sin in you. You shall give to him freely and your heart shall not be grudging when you give to him; because for this the Lord your God will bless you in all your work and in all that you undertake. For the poor will never cease out of the land; therefore I command you, you shall open wide your hand to your brother, to the needy and to the poor, in the land.⁴⁹

As part of its concern for helping the poor brethren, Old Testament legislation forbade interest-taking.⁵⁰ Three texts especially

⁴⁵Ex. 21:7-11; 22:6, 7; Dt. 24:6.

⁴⁶Lev. 25:4.

⁴⁷Ex. 21:lff.

⁴⁸Lev. 25:8ff.; cf. North, op. cit., for legislation on the Jubilee.

⁴⁹Dt. 15:7-11.

⁵⁰The Koran, arising in a milieu similar to that of the biblical prohibition, also forbade usury: "Those who devour usury shall not rise

are decisive:

If you lend money to any of my people with you who is poor, you shall not be to him as a creditor, and you shall not exact interest from him.⁵¹

You shall not lend upon interest to your brother, interest on money, interest on victuals, interest on any thing that is lent for interest. To a foreigner you may lend upon interest, but to your brother you shall not lend upon interest; that the Lord your God may bless you in all that you undertake in the land which you are entering to take possession of it.⁵²

And if your brother becomes poor, and cannot maintain himself with you, you shall maintain him; as a stranger and a sojourner he shall live with you. Take no interest from him or increase, but fear your God; that your brother may live beside you. You shall not lend him your money at interest, nor give him your food for profit. I am the Lord your God, who brought you forth out of the land of Egypt to give you the land of Canaan, and to be your God.⁵³

These three texts must be examined more closely. They are crucial not just for the Israelite prohibition of interest-taking, but for the Christian teaching on usury was well. As shall be seen, the Fathers quote them again and again. Councils refer to them explicitly. It is

again, save as he riseth whom Satan hath paralysed with a touch; and that is because they say 'selling is only like usury,' but God has made selling lawful and usury unlawful; and he to whom the admonition from his Lord has come, if he desists, what has gone before is his: his matter is in God's hands. But whosoever returns (to usury) these are the fellows of the Fire, and they shall dwell therein for aye. God shall blot out usury, but shall make almsgiving, profitable, for God loves not any sinful misbeliever." (II:276-77). The basis for the prohibition is compassion for those in distress; it is clearly related to the Koran's teaching on charity. Cf. also III:129, XXX:39. For translation and commentary, cf. Abraham Katsh, Judaism and the Koran (N.Y.: A.S. Barnes & Co., 1962), p. 184-85.

⁵¹
Ex. 22:24.

⁵²
Dt. 23:20-21.

⁵³
Lev. 25:35-38.

important, therefore, to know their extent and limitations.

The general context of the legislation has already been considered: concern for the poor, the lowly, the oppressed among God's People.

The first text (Ex. 22:24), from the Book of the Covenant, repeats this concern for the poor. In Hebrew it reads:

אִם בְּסֵרַךְ תִּלְוֶה אֶת-עַמִּי אֶת-הָעֹנִי
עִמָּךְ לֹא תִקְיָה לוֹ בְּנִשָּׁה לֹא-תִשְׁיָמוּן
עָלָיו נִשְׁקֶה

The text is old, dating probably from after the settlement but before the establishment of the state.⁵⁴ The verses immediately preceding the prohibition concern kindness toward the sojourner, the widow and the fatherless. The verses which follow concern compassion toward the poor man who has given his cloak as a pledge. The prohibition itself focuses on the "poor man among you."

The motivation for the prohibition is religious.⁵⁵ These are "my people," says Yahweh. God is the father of the nation. All Israelites are brothers. Among these there will always be poor men.

⁵⁴ Cf. Martin Noth, *Exodus*, translated by J. S. Bowden, (Philadelphia: Westminster, 1962), p. 174-75.

⁵⁵ H. Holzinger, *Exodus* ("Kurzer Hand-Commentar," II), (Leipzig: J. C. B. Mohr and Paul Siebeck, 1900), p. 92; Henri Cazelles, *Etudes sur le code de l' alliance* (Paris: Letouzey et Ané, 1946), p. 79.

The law seeks to protect them. It warns the Israelite not to be like the "usurer;" the man who presses for payment and sells the poor defaulter into slavery. It emphasizes a practical concern for the poor who have fallen into need and are reduced to borrowing. Clearly, it is not dealing with the foreign merchant who borrowed to finance profit-making enterprises.

The word אֱלֹהִים used in v. 24 of the Hebrew text refers specifically to Israel. Hebrew uses אֱלֹהִים in contrast to יְהוָה to stress Israel's religious position as the People of God. Ex. 19:4-7 brings out the significance of Israel's relationship to Yahweh: Israel is to be Yahweh's very own from among all the nations of the earth, she is to keep his commandments and abide by his covenant, she shall be a kingdom of priests and a holy nation. Dt. 7:6-12, 32:8ff., Ps. 134, and especially Dt. 4 emphasize Israel's distinctness from the nations around her. Dt. 4:5-10 drives home the point:

Behold, I have taught you statutes and ordinances, as the Lord my God commanded me, that you should do them in the land which you are entering to take possession of it. Keep them and do them; for that will be your wisdom and your understanding in the sight of the peoples, who, when they hear all these statutes, will say, "Surely this great nation is a wise and understanding people." For what great nation is there that has a god so near to it as the Lord our God is to us, whenever we call upon him? And what great nation is there, that has statutes and ordinances so righteous as all this law which I set before you this day? Only take heed, and keep your soul diligently, lest you forget the things which your eyes have seen, and lest they depart from your heart all the days of your life; make them known to your children and your children's children...

Israel is the People of God because of a free act on Yahweh's part. She stands as a people ever obliged to respond to Yahweh in faithfulness and love. The prophets call upon her continually to actualize her response.⁵⁶ The very call that constitutes Israel, that sets her off from the nations around her, is both promise and judgment. Israel must respond in faith if she is truly to be Yahweh's $\square \gamma$.

The latter part of Ex. 22:24 (עַלֶּיךָ וְעַלֶּיךָ יִשְׂרָאֵל - אֵל) ⁵⁷ is probably a later addition. It uses the plural, whereas the beginning of the verse employs the singular. In the spirit of the Book of the Covenant with its concern for the weak, it clarifies the clause "you shall not be to him as a creditor" by adding "you shall not exact interest from him."

The main part of the verse contains an apodictic clause which has been expanded by placing a conditional clause before it; thus, secondarily, the prohibition takes on the form of casuistic law. As case-law it is typical of the prescriptions discussed in the first chapter, since it considers a concrete situation and passes a legal judgment on it.⁵⁸ Since the judgment is concrete ("If..., then..."), one might also ask, "But if..., then what?"

⁵⁶ Amos 2:8; Is. 50:1; Jer. 15:10; 34:9-16; Ez. 18:8, 13; 22:12.

⁵⁷ Cazelles, p. 80; Holzinger, p. 92; Noth, p. 187; cf. also Paul Heinisch, *Das Buch Exodus* ("Bonner Bibel, I²"), (Bonn: Peter Hanstein, 1934), p.183.

⁵⁸ Edward Neufeld's article, "The Prohibitions against Loans at Interest in Ancient Hebrew Laws," *Hebrew Union College Annual*,

The second text,⁵⁹ from Dt. 23:20-21, implies such questions. It considers other cases. In answer to some it repeats the prohibition. In one case it allows interest-taking.

The Hebrew text reads as follows:

לֹא-תִשָּׂא לְאָחִיךָ נִשְׁכָּה בְּכֶסֶף וְנִשְׁכָּה אֶבְרָתָא
 וְנִשְׁכָּה בָּל-דָּבָר יֵאָסֶר לְנִשְׁכָּה :
 לְנִכְרִי תִשָּׂא וּלְאָחִיךָ לֹא תִשָּׂא
 לְמַעַן יִבְרַכְּךָ יְהוָה אֱלֹהֶיךָ בְּכָל
 מַשְׁלַח יְדֶךָ עַל-הָאָרֶץ יֵאָסֶר-אֶתָּה
 בָּא-שָׂמָּה לְרִשְׁתָּהּ

26 (1955), p. 355-412, while one of the most complete presentations on the subject, is ambivalent on the content of the prohibition in Exodus. On p. 358 he seems to restrict the prohibition to loans involving the poor, but on p. 407 he compromises on his position. There seems to me to be no evidence for concluding that interest-taking was ever allowed among the Israelites in loans to those who were not poor. On the contrary, the text from Deuteronomy and the traditions recorded in rabbinic literature would lead to the opposite conclusion.

⁵⁹ B.J. Meislin and M.L. Cohen, "Backgrounds of the Biblical Law against Usury," *Comparative Studies in Society and History*, 6, 3 (1964), p. 250-67, mistakenly place the text from Leviticus second. Unfortunately this work seems over-concerned with refuting the idea that hostility toward foreigners was at the root of the permission to take interest from the נִכְרִי. This *a priori* concern has led the authors into several errors. They maintain that early Babylonian loans were usually without interest; yet, as seen in the first chapter, loans at interest were common (though loans without interest were also common) even from a very early stage of Babylonian history. They attempt to explain the Deuteronomic legislation solely in terms of economics and give little emphasis to Israel's sense of unity as God's People. They restrict all three usury texts to loans to the needy; as pointed out above (cf. n. 58), such a position is historically untenable. Finally, they err on the order of the texts. On the last point, cf. Johann Hejcl, *Das alttestamentliche Zinsverbot im Lichte der Ethnologischen Jurisprudenz sowie des altorientalischen Zinswesens*, in *Biblische Studien*, 12, 4 (Freiburg im Breisgau: Herder, 1907), p. 77; cf. also, Neufeld, p. 364.

While the prohibition of usury is, as has been seen, early, its formulation⁶⁰ as it appears in Deuteronomy is probably from around the eighth century, emanating from one of the sanctuaries of the Northern Kingdom.⁶¹ The text is concerned with legal instruction, as is clear from its parenetic tone.⁶² The language is that of heart and of conscience. It appeals to deep religious motives.

This text is more explicit than Ex. 22:24. It spells out that the Israelite may not take interest on money or food or anything else. It again forbids interest from one's brother, but it explicitly allows it from the foreigner. Ex. 22:24 had not taken up the latter case, but had left its answer implicit in that it had centered its prohibition on the poor Israelite. Since Israel, even as late as Deuteronomy, was largely a nation of peasants, it was mostly foreigners who acted as merchants and traders (occasionally the word "Canaanite" means simply "trader," as in Zach. 14:21 and Prov. 31:24). There was no hesitation about taking interest from these.⁶³

⁶⁰S. Stein, "The Laws of Interest in the Old Testament," Journal of Theological Studies, 4 (1953), p. 166, argues for the early dating of all three texts, stating that there is little difference among the three formulations of the prohibition. While one can agree that the prohibition itself is very early, there are clear differences in the various formulations. These are reflective of developing casuistry.

⁶¹Gerhard von Rad, Deuteronomy, translated by Dorothea Barton, (Philadelphia: Westminster, 1966), p. 26.

⁶²Eichrodt, I, p. 90ff.

⁶³Von Rad, p. 148; cf. also, Hubert Junker, Das Buch Deuteronomium ("Bonner Bibel," II), (Bonn: Peter Hanstein, 1933), p. 98.

The text involves the concept of Israelite brotherhood. Because the foreigner (גֵּר) is not a brother (אָח), he may be charged interest. It will be helpful here to examine the concepts of brother and foreigner, since the distinction is central to the passage.

Israel was deeply conscious of her identity as God's People. The members of that people were brothers. The word אָח is frequently used to describe the Israelite in legal prescriptions placing demands on brotherhood. Dt. 15:2-3, for example, warns that creditors must observe the year of remission in regard to their brothers, fellow-Israelites, but it permits them to press debts against the גֵּר . Dt. 15:7, 9, 11 demand compassion for the אָח who is poor. Dt. 19:18ff. stipulates that the false accuser be treated as he had wished to treat his אָח ---eye for eye, tooth for tooth; yet Dt. 25:3 recommends mercy in punishing a guilty party because he is an אָח . An Israelite is responsible for the property of his אָח .⁶⁴ He will receive the death-penalty for kidnaping him.⁶⁵

The Book of Deuteronomy in particular emphasizes the brotherhood of Israelites, as is evident from a comparison with earlier texts. Where Ex. 21:2 speaks of buying a "Hebrew slave," Dt. 15:12 reads: "if your brother a Hebrew or Hebrewess is sold to you." Where Ex. 21:16 speaks of "one who steals a man and sells him,"

⁶⁴ Dt. 22:1-4.

⁶⁵ Dt. 24:7.

Dt. 23:7 states: "if a man be found stealing any of his brethren among the children of Israel." So also is it with the usury texts.

Ex. 22:25 speaks of "any poor man among you." Dt. 23: 19-20 speaks of "your brother."

The concept of brotherhood was derived from and fostered Israel's sense of unity as a people. The use of אָבִיר had a leveling function. While kings and prophets rose up from among the brethren, they too were members of the people, brothers among brothers, even if called to special service and power. Business dealings too were governed by the rules of brotherhood; concern for the poor and the laws against interest-taking followed from this. But business dealings with the גֵּר were quite different.

The גֵּר was not a blood relative, nor a neighbor, but a foreigner.⁶⁶ He is not included in the humane laws of Deuteronomy which seek to protect the needy.⁶⁷ He could not claim legal rights. He represented foreign gods and was excluded completely from Israel's religious ceremonies.⁶⁸

The גֵּר is not shown consideration as one of the poor as the sojourner (אֲדָמִי) is.⁶⁹ He is simply the foreigner, with whom the Israelite has no lasting relationship, who comes through with his caravans and sells his wares. Debts may be pressed against him, even in the year of remission.⁷⁰ Interest may be taken from him.⁷¹

⁶⁶Dt. 15:3; 17:15; 23:21.

⁶⁷Dt. 15:3; 23:20.

⁶⁸Ex. 12:43; Lev. 22:25

⁶⁹Cf. Dt. 10:18; 24:19ff.

⁷⁰Dt. 15:2-3

⁷¹Ex. 22:24; Dt. 23:20-21; Lev. 25:35-38.

Seen against the background of Israel's consciousness of her own unity as a brotherhood and her attitude toward the foreigner, Deuteronomy's prescription on usury is not surprising. Deuteronomy puts great emphasis on the brotherhood of God's People, so it forbids interest-taking among the brethren, a prescription which would be especially beneficial to the poor. But the foreigner is clearly not one of God's People. Interest may be taken from him.

The text from Lev. 25:35-38 reads as follows:

וְכִי-יִמְנֶה אָחִיךָ וּמָטָה יָרוּ אֶמְךָ וְהִחֲזִיקָה
 בּוֹ גֵר וְתוֹשָׁב וְחִי אִמְךָ : אַל-תִּקַּח
 מֵאֲתוֹ נֶשֶׁךְ וְתִרְבִּית וְזָרַצְתָּ מֵאֲלֵהֶיךָ וְחִי
 אָחִיךָ אִמְךָ : אֶת-כֶּסֶףךָ לֹא-תִתֵּן לוֹ
 בְּנֶשֶׁךְ וּבִתְרִבִּית לֹא-תִתֵּן אֶכְלָה :
 אֲנִי יְהוָה אֱלֹהֵיכֶם אֲשֶׁר-הוֹצֵאתִי אֶתְכֶם
 מִמִּצְרָיִם מִצְרַיִם לָתֵת לָכֶם אֶת-אֶרֶץ
 כְּנָעַן לְהִיּוֹת לָכֶם לְאֻלֵּיהֶם :

The context again deals with legislation concerning the poor and oppressed. Prescriptions about the Jubilee precede the passage on
⁷²usury. Prescriptions on the humane treatment of credit-slaves follow.

⁷²Cf. North, op. cit., for details on the Jubilee.

Though the prohibition is much older (as is evident from the previous texts and prophetic literature), the formulation as it is in Leviticus probably dates from around the time of the exile and derives from the Jerusalemite priestly circle.⁷³

While the text stands among laws about the Jubilee Year, it is not itself concerned with the Jubilee. Rather it seems to have been taken up secondarily into a series of prescriptions recommending compassion on those who have fallen on hard times (cf. Lev. 25:25, 35, 39, 47). Each of the members of the series begins **כִּי-יָמוּךְ אָחִיךָ**, except for v. 47 where the same words are present but a waw-conversive changes the tense.

The text uses three words for interest: **נֶשֶׁךְ**, **מַרְבִּית** and **תַּרְבִּית**. Authors have labored to distinguish the meanings of the words,⁷⁴ but their use is not frequent enough to allow clear-cut differentiation. The most common distinction made is that **נֶשֶׁךְ** refers to loans of money while **מַרְבִּית** (**תַּרְבִּית**) refers to food-loans, as seems obvious from v. 37 here.⁷⁵ The distinction, however, is by no means obvious, since the previous text, Dt. 23:20-21, speaks of **נֶשֶׁךְ** of money, **נֶשֶׁךְ** of food, or **נֶשֶׁךְ** of any kind. Since the Leviticus text is late, **מַרְבִּית** (**תַּרְבִּית**) may refer to one of

⁷³ Martin Noth, *Leviticus*, translated by J. E. Anderson, (Philadelphia: Westminster, 1965), p.15 and 128.

⁷⁴ For an interesting, but overconfident, discussion of the meaning of the words, cf. Hejcl, p. 77-89.

⁷⁵ Cf., e.g., Noth, p. 191.

the circumventions of the law, which Israelite legislation considered usury in disguise,⁷⁶ such as the common ruse of contracting for a very short-term loan without interest, but with a penalty for not repaying on time. Little more can be said with certainty, though the three words undoubtedly refer to some sort of interest-taking.

While the text from Deuteronomy explicitly treated interest-taking from the foreigner (**נִכְזֵר**), the later text from Leviticus takes up the case of the sojourner (**גֵּר**). Consistently, it forbids taking interest from the **גֵּר** . The Massoretic text, including the reference to the **גֵּר** , is not certain here, but the application of the usury law to the **גֵּר** , even if it were not explicit here, would follow from other parallel applications.

The **דֹּרְשֵׁי** were resident aliens who were to an ever greater degree incorporated into the community. The obligations of an Israelite toward a **גֵּר** became almost as strong as toward a fellow-countryman.⁷⁷ The **גֵּר** is often listed among the poor and helpless.⁷⁸ He is not to be oppressed.⁷⁹ What is left in the field or vineyard belongs to him.⁸⁰ Over and over again Yahweh tells Israel that there shall be one and the same law for the **גֵּר** and the native Israelite.⁸¹ Yahweh loves

⁷⁶ Cf., e.g., *Baba Mezi'a*, V, lf. (see ch. III for a discussion of later interpretations of the word *usury*).

⁷⁷ Dt. 5:14; 10:18ff.; 14:28ff.; 16:10ff.; 24:14, 17, 19-21; 26:11; 29:9ff.; 31:12; Ez. 14:7; 47:22ff.; Lev. 19:34.

⁷⁸ Dt. 26:11-13; Lev. 19:10; Ps. 94:6.

⁷⁹ Dt. 24:14.

⁸⁰ Dt. 24:19ff.

⁸¹ Ex. 12:49; Num. 9:14; 15:15; 16:29; Dt. 1:16; Lev. 19:34; 24:16, 22; Ez. 47:23.

the ⁸² אֵל, and so should Israel, since she also was once a אֵל in Egypt.⁸³ Israel's attitude toward the אֵל seems to grow friendlier with time, so that he becomes increasingly absorbed into the community. He takes part with men, women and children in the assembly.⁸⁴ He listens to the law and learns Yahweh's will. He even joins in Israel's cult.⁸⁵ In short, he shares many of the rights of the native Israelite. As one of the poor, he also comes under the poor-laws. Leviticus only makes these facts explicit in its application of the usury prohibition in his regard.

To complete this treatment of the Old Testament teaching on usury, having considered the main legal prescriptions, their background and development, a few other scattered texts should be mentioned in passing. These texts do not alter the picture seen so far, although at times, as shall be noted later, certain Church Fathers interpreted some of them as absolute prohibitions revoking the permission to take interest from the נֶכְרִי.

The most popular of the texts is Ps. 15:5 (date uncertain). The psalmist begins by asking who will be worthy to dwell in Yahweh's tent. In answer, he lists the qualities of the man who walks blamelessly before God. Near the end of the psalm he states that the just man "...lends not his money at usury." The Council of Nicaea (325) used this text in its

⁸² Dt. 10:18.

⁸³ Dt. 10:19.

⁸⁴ Dt. 31:10.

⁸⁵ Ex. 12:48ff.; Lev. 24:22; Num. 9:14; 15:14, 26.

condemnation of usurious clerics.⁸⁶ As is evident, the text served the council's purpose nicely since it deals with those who dwell in Yahweh's sanctuary and could be referred in an applied sense to clerics. Literally, however, the psalm refers to any Israelite: if he does not lend his money at usury, among other things, he will be worthy to dwell in Yahweh's tent.⁸⁷ While it has been claimed⁸⁸ that the usury prohibition, limited in Deuteronomy, is given absolutely here in Ps. 15:5, this is certainly not clear from an exegesis of the text, which simply reaffirms the prohibition but in no way suggests a change in the law concerning dealings with foreigners. On the contrary, as shall be seen, Jewish tradition continued to allow the taking of interest from the נִכְרִי.⁸⁹

Ez. 18:8-17 and 22:12 both treat of usury and were very popular with the Fathers. In his commentary on Ezekiel, to be considered later, St. Jerome claimed that 18:13 extended the usury pro-

⁸⁶ Cf. the text of Nicaea's seventeenth canon as quoted in the fifth chapter, p. 184.

⁸⁷ Cf. C. A. Briggs and E. G. Briggs, A Critical and Exegetical Commentary on the Book of Psalms ("International Critical Commentary"), (2 vols.; N. Y.: Scribners, 1906), I, p. 115.

⁸⁸ Cf. F. Baethgen, Die Psalmen ("Handkommentar zum Alten Testament, " II"), (Göttingen: Vandenhoeck und Ruprecht, 1904), p. 39.

⁸⁹ This point will be treated in the third section of the next chapter. Cf. especially, Baba Mezi'a, V, 1ff.

hibition to every case,⁹⁰ but again the text simply restates the law and does not show any indication of an attempt to revise it.⁹¹ Ezekiel's words do show the continued preaching of the usury prohibition among the exiled Israelites. As Jeremiah pointed out just before the exile (Jer. 34:8ff.), illicit credit-practices had so aroused Yahweh's wrath that he handed Israel over to her enemies. Ezekiel now reminds exiled Israel of the prohibition, which would, however, soon be forgotten again. Ezekiel's formulation of the problem resembles that of Leviticus; both Ez. 18:13 and 22:12 parallel וְהַיֹּשֵׁב and וְהַיֹּשֵׁב, as does Lev. 25:35-38. (Proverbs 28:8, a text describing the fate of the usurer, also parallels וְהַיֹּשֵׁב and וְהַיֹּשֵׁב, but it does not supply any information that would help distinguish the two.)

Finally, the fifth chapter of Nehemiah provides further information on the persistence of interest-taking. It will be recalled from Jer. 34:8ff., quoted above, that seizure of the person of debtors

⁹⁰ Cf. his commentary on Ez. 18 (PL, 25:176-77). Old opinions have a way of reappearing. G.A. Cooke, in *A Critical and Exegetical Commentary on the Book of Ezekiel* ("ICC"), (2 vols.; N.Y.: Scribner's, 1937), I, p. 199, like St. Jerome, maintains that while Deuteronomy allows interest toward the foreigner Ezekiel condemns it altogether. Again, this is not at all clear from the text of Ezekiel, nor does it jibe with Israelite tradition. Cf. ch. IV for details on St. Jerome's *In Ez. Commentarii*.

⁹¹ Cf. J. Ziegler, *Ezechiel* ("Echter-Bibel"), (Würzburg: Echter-Verlag, 1948), p. 55.

was common among Israelites before the exile. The practice is cited as one of the crimes for which Yahweh punished Zedekiah and his people by handing them over to the king of Babylon (Jer. 34:21). Obviously Israel did not learn her lesson, in spite of the efforts of both Jeremiah and Ezekiel. In post-exilic times Nehemiah (who returned to Jerusalem sometime after 445) is again seeking to remedy the evils caused by usury and credit-slavery. He states:

"What you are doing, " I went on, "is wrong. Do you not want to walk in the fear of our God and escape the sneers of the nations our enemies? I too, my kinsmen, and my servants have lent them money and corn. Let us cancel this debt. Return them their fields, their vineyards, their olive groves and their houses forthwith, and remit the debt on the money, corn, wine and oil which you have lent them." (Neh. 5:9-11)

In the Hebrew text the concluding words of this passage read: "... remit the hundred ($\text{לשׁלשׁ} = \text{לשׁלשׁ} = \text{לשׁלשׁ}$ "hundred") on the money, corn, etc." While it has been claimed⁹² that this text sheds light on the interest charged by money-lenders in Palestine at the time of Nehemiah (i.e., a hundredth monthly, or 12% annually), most authors⁹³ agree that the text must be emended to read $\text{לשׁלשׁ} = \text{לשׁלשׁ}$ ("loan") instead of $\text{לשׁלשׁ} = \text{לשׁלשׁ}$ ("hundred"), so that it refers merely to what is owed in general.

⁹² Cf. E. Neufeld, "The Rate of Interest and the Text of Nehemiah," Jewish Quarterly Review, 44 (1953-54), p. 194-204.

⁹³ Cf. deVaux, I, p. 171; Loring Batten, A Critical and Exegetical Commentary on the Books of Ezra and Nehemiah, ("ICC"), (N.Y.: Scribners, 1912), p. 243; A. Bertholet, Esra und Nehemia ("Kurzer Hand-Commentar," XIX), (Leipzig: J.C.B. Mohr and Paul Siebeck, 1902), p. 62; Hermann Bückers, Die Heilige Schrift ("Herders

The text points up, however, the inefficacy of the usury prohibition. Interest-taking, to judge from Nehemiah's plea, was apparently very widespread, even after the punishment of the exile.

Scattered references from wisdom literature give some confirmation of what history tells about the persistence of the usury problem. Ps. 15:5, as mentioned above, alludes to the existence of the problem in describing the just man as one who "lends not his money at usury." The contrast is obviously with the Israelite who does lend at usury. In Ps. 109:11, a prayer against a slanderous enemy, the avaricious money-lender appears as a stock, disreputable social-type, though here the reference could be to non-Israelites: "May the usurer ensnare all his [the enemy's] belongings." Prov. 28:8 clearly presupposes usury as an existent practice and is directed to Israelites as a warning: "He who increases his wealth by וְשִׁוִּי and אֶת־כֶּסֶף gathers it for him who is kind to the poor." Likewise, the practices of the usurious money-lender are almost certainly the backdrop for the aphorism in Prov. 22:7,⁹⁴ though this saying could refer to either Israelite or non-Israelite usurers: "The borrower is the slave of the lender."

Bibelkommentar, " IV²), (Freiburg: Herder, 1953), p. 123-24; Jacob Myers, Ezra, Nehemiah, ("The Anchor Bible," 14), (Garden City, N. Y.: Doubleday and Co., 1965), p. 128. All prefer the revised reading suggested in Kittel's edition of the Hebrew Bible.

⁹⁴ Cf. Mendelssohn, p. 25.

From the witness of the Old Testament, it is difficult to escape the conclusion that lending at interest took place throughout Israel's history. Credit-slavery was common. The prophets often raised their voices against oppression of the poor, especially through usury.⁹⁵ Jeremiah cites illicit credit-practices as a cause of the exile (Jer. 34:8ff.). Nehemiah finds the same practices after the exile (Neh. 5:7ff.). Wisdom literature contains scattered allusions that make it evident that the usurer was persistent and that the problem perdured.

In addition to the witness of the Bible, archaeological evidence gives instances of loans at interest among Jews. Just shortly before Nehemiah returned to Jerusalem (c.445) and found the problem of usury rampant there, it is clear that interest-taking was going on among Jews in Egypt also. Among the Elephantine papyri are two contracts in which one Jew takes interest from another. The first of these, from 456 B.C., exacts 60%. It reads as follows:⁹⁶

¹ On the 7th of Chisleu, that is the 4th day of the month Thoth, the 9th year of Artaxerxes ² the king, said Ya'uhan daughter of Meshullak, spinster (?), of Yeb the fortress, to Meshullam b. ³ Zaccur, Jew, of Yeb the fortress, as follows: You have given to me as a loan the sum of 4 shekels, ⁴ that is four, by royal weight, at interest, which shall be due from me ⁵ at the rate of 2 hallurin per shekel

⁹⁵

Cf. Amos 2:8; Is. 50:1; Jer. 15:10; 34:9-16; Ez. 18:8, 13; 22:12.

⁹⁶

A. Cowley, Aramaic Papyri of the 5th Century B.C. (Oxford: Clarendon Press, 1923), p. 29-32; papyrus #10.

per month, being at the rate of 8 hallurin⁶ for each month. If the interest is added to the capital, it shall pay interest like the capital,⁷ both alike, and if there come a second year and I have not paid you your money⁸ and interest on it as written in this deed, you, Meshullam, and your children, have the right⁹ to take for yourself any security which you may find of mine in the countinghouse, silver or gold,¹⁰ bronze or iron, male or female slave, barley, spelt or any food that you may find of mine,¹¹ till you have full payment of your money and interest thereon, and I shall have no power to say to you that I have paid you¹² your money and the interest on it while this deed is in your hand, nor shall I have power to lodge a complaint¹³ against you before governor or judge on the ground that you have taken from me any security while this deed¹⁴ is in your hand. If I die without paying you this money and interest thereon,¹⁵ my children are to pay you this money and interest thereon. If¹⁶ they do not pay you this money and interest thereon, you Meshullam have a right¹⁷ to take for yourself any food or security that you may find of theirs until you have full payment¹⁸ of your money and interest thereon, and they shall have no power to lodge a complaint against you before governor¹⁹ or judge while this deed is in your hand. Even if they go to law they shall not win their case²⁰ while this deed is in your hand. Nathan b. 'Anani wrote this deed²¹ at the dictation of Ya'uhan. Witnesses hereto: Witness, Oshea' b. Gilgul.²² Hodaviah b. Gedaliah. Ahio b. Pelatiah. Agur b. Ahio. (Endorsement.)²³ Deed of money lent (?), which Ya'uhan daughter of Meshullak wrote²⁴ for Meshullam b. Zaccur.

The contract is of interest from several points of view. First, it is a clear violation of the usury prohibition. Second, its rate is an exorbitant 60% annually. Third, it involves anatocism (i.e. charging interest on interest), a frequent abuse in loan contracts throughout early history. Fourth, it shows the difficulties that a debtor's children might find themselves in if their father died.

A second contract from about the same time shows another loan between Jews, probably again at 60%. The text reads as follows:⁹⁷

¹ ... You have given me the sum of ² 4 shekels by the weight of Ptah, at the rate of 1 shekel to 10, and interest shall be due from me at the rate of 2 hallurin ³ for the sum of 1 shekel per month, till the day when I repay it to you, so that the interest on ⁴ your money shall be 8 hallurin each month. Any month in which I do not give you ⁵ interest, it shall be (added to the) capital and shall bear interest. I will pay it to you month by month ⁶ out of my salary which they give me from the treasury, and you shall write me a receipt for all ⁷ money and interest which I pay to you. If I do not pay you all ⁸ your money and the interest thereon by the month of Thoth in the 9th year, your money shall be doubled(?) ⁹ and the interest on it which is outstanding against me, and interest shall be due from me month by month ¹⁰ until the day when I repay it to you. ... witnesses

Again the text shows a clear violation of the law against interest-taking, an exorbitant interest-rate, anatocism, and a penalty for defaulting.

In the Tebtunis Papyri, another contract, dated 174 B.C., contains a loan at interest between two Jews:⁹⁸

Judas, son of Joseph, Jew of the Epigone, has lent Agathecles, son of Ptolemy, Jew... two talents five hundred drachmae of copper money for twelve months from the date above written with interest at two drachmae per mina per month.

⁹⁷ Cowley, p. 32ff.; papyrus #11.

⁹⁸ B.P. Grenfell, A.S. Hunt and J.G. Smyly (ed.), *The Tebtunis Papyri* (New York: Oxford University Press, 1910-38), III, I, #818, p. 318-19.

Combining such extra-biblical evidence with the repeated cries of the prophets and the exhortations of the authors of wisdom literature, it becomes quite evident that in spite of prohibitions usury plagued Israel throughout most of her history. The study of rabbinic literature in the next chapter will make this fact even clearer.

The Old Testament outlook on usury can now be briefly summarized.

Israelite law repeatedly called for special consideration for the poor among the brethren. It was in this context that the usury prohibition arose. To take interest from a poor brother was to oppress him, to profit from his need. The law therefore forbade it.

Three texts are especially important. Ex. 22:24 focuses on the "poor man among you." It forbids usury among "my people." The prohibition here is concrete and limited. Dt. 23:20-21 asks further questions and gives more detailed answers. The Israelite may not take interest on money or food or anything else, but he may take it from a foreigner, who is not one of the brethren. Lev. 25:35-38, the latest of the three texts, makes the law even more explicit. The Israelite may not take interest from the ⁷א .

The three texts show the concreteness and vitality of Israelite law. They arise from a consciousness of the unity of God's People in a single brotherhood. They aim at eliminating a particular

abuse among the brethren. As circumstances vary, the later texts attempt to take new data into account. In all of the texts the reason for the prohibition is clear: usury destroys the charity that should exist among brothers. It is seen especially as oppression of the poor, whom Yahweh loves.

Other texts repeat the prohibition, but neither absolutize it nor weaken it. They do make it evident that usury, even among the brethren, continued and that the problems of the poor remained.

Archaeological evidence confirms what the protestations of prophetic and wisdom literature already make abundantly clear. Not only was interest-taking common among Jews, but it was common at exorbitant rates, to which other oppressive practices were added.

CHAPTER III

USURY IN GREEK, ROMAN AND RABBINIC THOUGHT

The Christian teaching on usury did not develop in a vacuum. Christianity was born in a semitic milieu and spread rapidly through the Graeco-Roman world. Naturally, its ancestry and its environment influenced its moral thinking. This study of the background for the Christian teaching on usury has considered ancient Near-Eastern and Old Testament attitudes in its first two chapters. It will now turn to look at those later strains of thought that existed side by side with Christian teaching and influenced it. The Fathers of the Church, as will be seen in the fourth chapter, were well acquainted with how others thought about usury. Their writings reflect and interact with attitudes toward interest-taking in Greece and Rome and in early rabbinical literature. These attitudes must now be examined.

1. Greek attitudes toward usury.

Lending was very common in ancient Greece. Taking interest was a fact of life, though never a universally approved one. Thriving land and sea commerce provided expanding markets for the money-lender's wares. It seemed quite legitimate to most Greek citizens that the lender should share in the increased productivity his loan caused, especially when he risked his money in the process.¹

¹ Cf. Demosthenes, In Pantanenetum, 53-54, (henceforth, Pant.).

Even if at times the professional money-lender's reputation suffered (often deservedly),² citizens put him in a class different from that of the honest man who lent as a service to the community rather than hoard his own capital. Orators proclaimed the public usefulness of loans at reasonable interest-rates as a means for feeding trade.³ The courts were severe with fraudulent debtors.⁴

By the end of the fifth century before Christ, banking was a growing concern in Athens. Inventories of legacies and lawsuits in the middle of the fourth century show fortunes invested entirely in loans.⁵ Aeschines the philosopher kept his perfume-works in business by borrowing. Pantaenetos and Mantitheos ran mines with the help of the money-lenders.⁶ Lending at interest was so commonly accepted at Athens that the popular uprisings of debtors which dotted Roman history are generally lacking in Greece.⁷ Most Greeks saw

² Plutarch, Moralia, X, 829.

³ Cf. Demosthenes, Pant., 53-54.

⁴ Demosthenes, In Phormionem, 50 (henceforth, Phorm.). This work was probably written by a contemporary of Demosthenes, not by Demosthenes himself. For a discussion of the authenticity of each of Demosthenes' works, cf. F. Blass, Die Attische Beredsamkeit (Leipzig: Teubner, 1893), III, p. 225f; concerning Phorm., cf. p. 581.

⁵ G. Glotz, Ancient Greece at Work (N.Y.: A.A. Knopf, 1926), p. 241.

⁶ Ibid.

⁷ E. Caillemier and F. Baudry, "Foenus," Dictionnaire des Antiquités Grecques et Romaines, II, 1214-1226; cf. 1215.

loans made for commercial reasons as an element in the general prosperity. An unknown contemporary of Demosthenes (384-322 B.C.), for example, writes:⁸

...the resources required by those who engage in trade come not from those who borrow, but from those who lend; and neither ship nor shipowner nor passenger can put to sea, if you take away the part contributed by those who lend. In the laws there are many excellent provisions for their protection. It is your duty to show that you aid the laws in righting abuses, and that you make no concession to wrongdoers, in order that you may derive the greatest possible benefit from your market.

Two types of loans at interest existed: ordinary (or terrestrial) and maritime. The first involved only the single danger of insolvency; even this could be greatly attenuated by pledges. The second involved all the dangers of ancient-world shipping, so that naturally its rate of interest was higher.⁹

It is practically certain that the principle of unrestricted liberty on interest-rates prevailed throughout Greek history.¹⁰ A decree at Delphi limiting interest to 6% seems only a temporary revolutionary phenomenon.¹¹ The general attitude was laissez-faire.

⁸ Demosthenes, Phorm., 51-52 (Loeb transl.).

⁹ L. Beauchet, Histoire du droit privé de la République Athénienne (4 vols.; Paris: Chevalier-Marèsq, 1897), IV, 243ff.

¹⁰ Caillemer, 1215; Glotz, p. 242; Bernard, 2319-2320.

¹¹ Glotz, p. 242.

The ordinary rate of interest, paid on a monthly basis, came to 12% a year (one drachma per mina).¹² A 10% rate was considered a favor.¹³ Mortgage and commercial loans were offered at 16% and 18%,¹⁴ while maritime loans had rates of 20%, 40%, 60% and even 100%¹⁵ depending on who the borrower was, the destination of the ships, and the political and economic situation. Maritime loans often took the form of bottomry bonds, so that the ship served as security.¹⁶ In case of shipwreck, the borrower owed nothing, neither interest nor principal; as a result, the creditor ran an even greater risk than the debtor. This helps account for the high interest-rates. For a single voyage from the Bosphorus to Piraeus in war-time creditors asked 12 1/2%; the trip took just a few days. For a round-trip over the same route they asked 30%. In better times 30% was asked for the whole sailing season, about seven months. Some money-lenders asked 100% for ventures in the Euxine and the Adriatic.¹⁷

Yet while the legitimacy of interest-taking was generally recognized through Greek history, several strains of opposition did exist. First, family customs were still strong enough for the free loan

¹² Beauchet, IV, p. 249-250. Because of the publication of numerous Greek documents since 1897, Beauchet's work is now clearly outdated, but it is still very useful for its many details concerning the practice of interest-taking. Cf. especially, p. 243-271.

¹³ Glotz, p. 243.

¹⁴ Bernard, 2320.

¹⁵ Caillemier, 1216.

¹⁶ Glotz, p. 243.

¹⁷ Ibid.

(eranos) to be a constant, and highly esteemed, practice, which extended beyond the family to corporate enterprises. Second, legal and non-legal reactions to abuses involved in money-lending show popular concern and restrictions in practice. Third, the greatest of the philosophers, Plato and Aristotle, attacked usury as an unnatural means of acquiring money.

Each of these strains shall now briefly be considered.

1) The eranos.

The word eranos originally designated a communal banquet among friends. Homer used it in this sense in the Odyssee.¹⁸ From this primitive sense the word came to designate a sumptuous meal in general,¹⁹ and then an association made up of friends who reunited at definite intervals for a common meal.²⁰ Such associations might have various ends: religious, political, economic, etc. Finally the word came to mean a gratuitous loan made by several persons who had come together to help a common friend.²¹ In this last meaning, the one which is of interest here, the meal-element has dropped out of eranos entirely, but the elements of friendship and association remain, now specified toward a definite goal.

¹⁸ Homer, Odyssee, I, 227; XI, 415.

¹⁹ Euripides, Helena, 388; Pindar, Pythia, V, 77; XII, 14.

²⁰ Cf. Pliny, X, ep. 93.

²¹ Cf. Aristophanes, Acharnenses, 615; Theophrastus, Characteres, I, 13; XV, 10; XVII, 16; XXIII, 23.

The obvious difference, then, between the ordinary loan (daneismos) and the eranos is that the one bore interest while the other did not. Since the ordinary rate in Greece was 12%, the eranos was considered a service par excellence. Its only return was well-deserved gratitude.²²

Often it was an urgent need that gave rise to an eranos.²³ Sometimes it was a question of paying the ransom of a captive,²⁴ sometimes buying back a slave, supplying a dowry,²⁵ or satisfying demanding creditors.²⁶ Ordinarily it was the borrower himself who had to approach his friends with the hope of scraping together an eranos. The comic poets, the orators and the moralists all paint scenes depicting this burdensome job.²⁷

Little is known of the legal formalities surrounding the eranos. Each creditor certainly received his money back, without interest, probably in installments. It also seems certain that the eranos gave rise to a true civil obligation²⁸ which could be pressed in court

²² Theophrastus, Characteres, XVII, 16.

²³ Demosthenes, In Nicostratum, 8-9. This work appears under Demosthenes' name, but was almost certainly not written by him, but by a contemporary. Cf. Blass, III, p. 520.

²⁴ Demosthenes, In Neaeram, 31. This work also merely uses Demosthenes' name; it was written by a contemporary. Cf. Blass, III, p. 535.

²⁵ Cornelius Nepos, Epaminondas, 3.

²⁶ Aristophanes, Acharnenses, 615.

²⁷ Cf. Aristophanes, Acharnenses, 615; Demosthenes, In Neaeram, 31, and In Nicostratum, 8-9.

²⁸ Th. Reinach, "Eranos," Dictionnaire des Antiquités Grecques et Romaines, II, 805-808; cf. 807.

(though Plato would not have allowed this).²⁹

The eranos was a constant practice throughout the Athenian period. It enjoyed high honor since the creditor parted with something which could be useful to him and which he might never receive back. Because of its economic advantages for the debtor, it was always seen as preferable to the loan at interest and was continually held in greater esteem.

2) Reactions to abuses.

Greed consistently awakens adverse public reaction. In Athens orators scorned it, playwrights satirized it, and philosophers condemned it. Especially odious was the greed of the public money-lender, which tended to reduce the debtor to privation or even slavery. Bemoaning the greed that corrupted Athens, Demosthenes (384-322 B.C.) placed the following lament in the mouth of Solon, the reformer-hero of the debt-ridden poor:³⁰

Not by the doom of Zeus, who ruleth all,
Not by the curse of Heaven shall Athens fall.
Strong in her Sire, above the favoured land
Pallas Athena lifts her guardian hand.
No; her own citizens with counsels vain
Shall work her ruin in their quest of gain;
Dishonest demagogues her folk misguide,
Foredoomed to suffer for their guilty pride.
Their reckless greed, insatiate of delight,
Knows not to taste the frugal feast aright;
Th' unbridled lust of gold, their only care...

²⁹ Plato, Leges, XI, 921d.

³⁰ Demosthenes, De falsa legatione, 255 (Loeb transl.).

Until the sixth century B.C. insolvent debtors were obliged to place their bodies at the disposal of their creditors, to work as slaves, to be sold into captivity, or even to be killed.³¹ Solon (c. 640/635 - 561/560 B.C.) put an end to that by forbidding the pledging of the body as security for a loan. The exact nature of his reform is not totally clear (nor was it clear even in Aristotle's time),³² but from Plutarch's *Moralia*³³ and Aristotle's *Ἀθηναίων Πολιτεία*³⁴ it is evident that the great reformer abolished all borrowing on the security of the debtor's person.

Aristotle (384-322 B.C.), for example, writes:³⁵

...all borrowing was on the security of the debtor's persons down to the time of Solon: it was he who first became head of the People. Thus the most grievous and bitter thing in the state of public affairs for the masses was their slavery; not that they were not discontented about everything else, for they found themselves virtually without a share in anything.

³¹ Evidence exists from early Rome that creditors might even chop up the debtor's body and distribute the parts among themselves. Cf. *Leges duodecim Tabularum*, III, 1-6 ("...Tertius nundinis partis secanto. Si plus minusve secuerunt, se fraude esto.").

³² Cf. Aristotle, *Ἀθηναίων Πολιτεία*, IX, 1 (henceforth, *Ath.*).

³³ Plutarch, *Moralia*, 828: "For what good did Solon do the Athenians when he put an end to giving one's person as security for debt?" (Loeb transl.).

³⁴ Aristotle, *Ath.*, II, 2; IV, 2; IX, 1.

³⁵ *Ath.*, II, 2 (Loeb transl.).

He continues later in the 'Αθηναίων Πολιτεία :36

... the three most democratic features in Solon's constitution seem to be these: first and most important, the prohibition of loans secured upon the person; secondly, the liberty allowed to anybody who wished to exact redress on behalf of injured persons; and third, what is said to have been the chief basis of the powers of the multitude, the right of appeal to the jury-court...

With Solon's reform one of the greatest abuses involved in money-lending was eliminated. But others remained. Anatism, the practice of taking interest on interest (easily manipulated by adding the unpaid interest to the unpaid capital and using the sum as the base for the next interest payment), aroused strong public resentment,³⁷ though probably not to the extent of provoking a legal prohibition, as was later enacted in Rome.³⁸

Plutarch (c. 46 A.D. - after 120), whose general attitude toward lending at interest is a bit ambiguous, warns his fellow-citizens not to borrow lightly, whether they be rich (because then they do not need to borrow) or poor (because then they will be unable to repay). He asks what good Solon had done for the Athenians when he put an end to giving one's person as security for a debt, if debtors are still slaves to those who ruin them and money-lenders still make the market-place a place of the damned.³⁹

³⁶ Ath., IX, 1 (Loeb transl.).

³⁷ Plutarch, Moralia, 828.

³⁸ Caillemer, 1216.

³⁹ Plutarch, Moralia, 829 (Loeb transl.).

As Dareius sent Datis and Artaphernes against Athens with chains and fetters in their hands for their captives, in similar fashion these men, bringing against Greece jars full of signatures and notes as fetters, march against and through the cities, not...sowing beneficent grain, but planting roots of debts, roots productive of much toil and much interest and hard to escape from, which, as they sprout and shoot up round about, press down and strangle the cities.

Plutarch also highlights another of the practices that aroused strong public opposition in Greece, immediate discount of interest from the loan (i.e., subtracting the interest from the capital even before handing it over, so that the debtor actually paid for what he never received).⁴⁰

They say that hares at one and the same time give birth to one litter, suckle another, and conceive again; but the loans of these barbarous rascals give birth to interest before conception; for while they are giving they immediately demand payment, while they lay money down they take it up, and they lend what they receive for money lent.

While seizure of person disappeared after Solon, the fear of property-seizure remained to plague the debtor as the dreaded first of the month approached. In Nubes Aristophanes (c. 450-c. 385 B.C.) pictures Strepsiades' sleepless night as he thinks of the coming money-lender.⁴¹

⁴⁰

Ibid.

⁴¹

Aristophanes, Nubes, 1. 12ff (Loeb transl.).

But I can't sleep a wink, devoured and bitten
 By ticks, and bugbears, duns, and race-horses,
 All through this son of mine. He curls his hair,
 And sports his thoroughbreds, and drives his tandem;
 Even in dreams he rides: while I --- I'm ruined,
 Now that the Moon has reached her twentieths,
 And paying-time comes on. Boy! light a lamp,
 And fetch a ledger: now I'll reckon up
 Who are my creditors, and what I owe them...
 You have rolled me out of house and home, my boy,
 Cast in some suits already, while some swear
 They'll seize my goods for payment.

The difficulty that presses Strepsiades is not the capital
 that his son has squandered at the races, but the interest, which
 is continually mounting.⁴²

STREPS. Interest? what kind of a beast is that?
 AMYN. What else than day by day and month by month
 Larger and larger still the silver grows
 As time sweeps by. STREPS. Finely and nobly said.
 What then! think you the Sea is larger now
 Than 'twas last year? AMYN. No surely, 'tis no larger:
 It is not right it should be. STREPS. And do you then,
 Insatiable grasper! when the Sea,
 Receiving all these Rivers, grows no larger
 Do you desire your silver to grow larger?

While public opinion clearly opposed the greedy practices
 of the money-lenders, in general the citizens of Greece always re-
 cognized the legitimacy of normal interest and the usefulness of loans

⁴²
Nubes, l. 128~~6ff.~~ (Loeb transl.).

at interest for the welfare of the city-state.⁴³ Pseudo-Demósthene's
reflects both the opposition to abuse and the approval of legitimate
practice in the oration In Pantáeneton:⁴⁴

I, for my part, do not regard a money-lender as a wrongdoer, although certain of the class may justly be detested by you, seeing that they make a trade of it, and have no thought of pity or of anything else, except gain. Since I have myself often borrowed money, and not merely lent it to the plaintiff, I know these people well; and I do not like them either; but, by Zeus, I do not defraud them, nor bring malicious charges against them. But if a man has done business as I have, going to sea on perilous journeys, and from his small profits has made these loans, wishing not only to confer favors, but to prevent his money from slipping through his fingers without his knowing it, why should one set him down in that class? --- unless you mean this, that anyone who lends money to you ought to be detested by the public.

3) The philosophers

The most clear-cut opposition to interest-taking in Greece was philosophical. Plato (c. 429-347 B.C.) and Aristotle both condemned the practice. Yet loans at interest were so widely recognized as integral to Athenian economic life that the voices of the great philosophers went largely unheard.

⁴³ The words in general must be used to qualify this statement. As will be seen, there were exceptions to this general attitude. In Sparta, moreover, interest-taking was apparently forbidden as part of a larger isolationist policy that abhorred money and commerce. Unfortunately most information concerning Sparta comes from Athenian sources; there are almost no extant indigenous sources.

⁴⁴ Demosthenes, Pant., 53-54 (Loeb transl.).

There is a temptation (into which several important modern works on usury have fallen)⁴⁵ to dismiss Plato's statements on the subject as musings on an ideal republic; the inference is that Plato could hardly have intended such impractical reflections as applicable to the real world. But this is to misunderstand Greek political theory.

In ancient Greece political theory was a practical science. It dealt with matters which could be otherwise. Philosophers felt themselves charged with the duty of showing how things might be otherwise---and better.⁴⁶ Their political theory was idealistic, yet practical. It envisioned ideal states, yet states which were meant to be realized. Plato actually attempted to put the ideal into practice in his ill-fated venture at Syracuse.

UTOPIAN

Both Plato and Aristotle held up the independent city-state as their ideal.⁴⁷ They sought to rescue the city-state from the intellectual and moral corruption that threatened its life. For both

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Cf. L. Levasseur, "Prêt à intérêt," La Grande Encyclopédie, 27, 608-614; cf. 610; also, A. Bernard, op. cit., 2318. Bernard's work is one of the best general surveys of the question available. He misses the point here, however, as explained above in the text.

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E. Barker, "Greek Political Thought and Theory in the Fourth Century," Cambridge Ancient History, VI, p. 506f.

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W. Jaeger, Paideia (N.Y.: Oxford University Press, 1943), I, p. 107.

philosophers politics and morals were two sides of the same coin. The state's purpose was to realize the highest good for its citizens. It was the home of moral life.⁴⁸ It aimed to make its citizens virtuous. If interest-taking was the cause of evil, the state should eradicate it. Neither Plato nor Aristotle were blind to the signs of the times. But the signs, as they saw them, were those of moral decay. Both philosophers were critics of the democratic Athens that had turned itself into a commercial center and had thrown away moral purpose. They were thus conservative and radical at the same time; in a prophetic way, they called for a return to the true ideals of the self-sufficient city-state, but their call necessarily meant drastic change from the status quo. Believing in the city-state as it should be, they could not believe in it as it was.⁴⁹

So at a time when gold and silver were very much a reality, when banking was flourishing and commerce was Athens' life-blood, Plato wrote that the amassing of wealth was incompatible with sober and virtuous citizenship.⁵⁰ Greed, he said, reduces many to poverty. It creates debtors who are soon eager for revolution. Money-lenders only hasten the decay of the polis. For their own profit, they build up the drone- and pauper-element of the population.

⁴⁸ Barker, p. 514; also, Jaeger, I, p. 113.

⁴⁹ Barker, p. 528-29.

⁵⁰ Plato, Respublica, VIII, 10, 556A.

Plato, like Aristotle, saw money as barren,⁵¹ so he
outlawed profit on loans. In his Leges he writes:⁵²

No one shall...lend at interest, since it is permissible for the borrower to refuse entirely to pay back either interest or principal.

Plato aimed to form citizens mutually interested in one another. He eliminated traffic in gold and silver as the source of selfishness and strife. He believed that the law-maker's job was to establish an order where the good was the supreme value; consequently, the Leges put aside what his society considered the ordinary means of commercial growth and fortune. But this ideal scheme never took root in the real world of Athens.

Aristotle, like Plato, was far from unconscious of the real-world situation. He examined that situation philosophically and condemned it. The condemnation is really quite amazing when viewed in its context. Aristotle wrote at the dawn of a new era. His pupil Alexander was to establish a world empire that would make the self-sufficient city-state a thing of the past. In Athens commerce with other states had long been a thriving enterprise. Usury was an everyday affair. Yet Aristotle condemned it.

⁵¹ Plato, Leges, XI, 921d.

⁵² Plato, Leges, V, 742 (Loeb transl.).

For Aristotle, economics was subordinate to politics, and politics to ethics. There could be no isolation of the economic motive, no separate inquiry into economics as an independent science.⁵³ *Oikonomia* was literally the "law of the household."⁵⁴ It studied the ways in which households and cities could properly use the means at their disposal for the better living of moral life. Wealth was simply a means to a moral end. Its acquisition was necessarily limited by that end. A man should have neither more nor less than the end required.

Money-making, for Aristotle, is certainly a necessary art; it is part of managing a household. But if it becomes the end of life, if it knows no bounds and turns even to unnatural practices to satisfy its excessive desires, it is plainly contrary to man's true good. Interest-taking is a prime example.⁵⁵

Of the two sorts of money-making, one, as I have just said, is a part of household management, the other is retail trade: the former necessary and honorable, the latter a kind of exchange which is justly censured; for it is unnatural and a mode by which men gain from one another. The most hated sort, and with the greatest reason, is usury, which makes gain out of money itself, and not from the natural use of it. For money was intended to be used in exchange, but not to increase at interest. And this term usury (*tokos*), which means the birth of money from money, is applied to the breeding of money because the offspring resembles the parent. Wherefore of all modes of making money this is the most unnatural.

⁵³ Barker, p. 528.

⁵⁴ Cf. Aristotle, *Politica*, I, 10, 1258 a-b (Jowett transl.).

⁵⁵ Ibid.

Aristotle's position is clear. He condemns usury uncompromisingly as contrary to nature. He starts from a limited concept of money as a medium of exchange and envisions no other natural usage. Attempts to employ money in a way contrary to its nature are wrong. This position, while uncompromising, was also rather isolated in commercial Athens.

Aristotle places money-lending among the most despicable occupations. The usurer, because of greed, attempts to make a profit from what is naturally sterile and purely a medium of exchange. Discussing "meanness" in the Ethica Nichomachea, Aristotle distinguishes those who are mean because of deficiency in giving and those who are mean because of excess in getting. In the latter category he lists the money-lender along with other unsavory characters.

The other sort of people are those who exceed in respect of getting, taking from every source and all they can; such are those who follow degrading trades, brothelkeepers and all people of that sort, and petty usurers who lend money in small sums at a high rate of interest; all these take from wrong sources, and more than their due.

But Aristotle's idealistic vision, like Plato's, did not captivate the minds of his fellow-countrymen. Contemporary writers, as seen above, show a completely different attitude toward the money-

lender. They regard him as a man worthy of esteem, since he gives the borrower something valuable and in return receives only a tablet with a promise inscribed on it. The orations In Phormionem and In Pantænētum, both quoted earlier, manifest a clear appreciation of the role of the money-lender in the commercial life of Athens.⁵⁷

Some conclusions about Greek attitudes toward usury can now be summarized briefly.

It is clear that all through Greek history interest-taking was common practice. The usual rate was 12%. Several strains of opposition did, however, exist. The eranos remained a constant practice which was always held in higher esteem than the loan at interest. Abuses, moreover, aroused adverse public sentiment toward the professional money-lender and interest-taking. Finally, the greatest of the Greek philosophers, Plato and Aristotle, both condemned interest-taking.

All of these factors, as will soon be seen, throw light on the writings of the Fathers.

2. Roman attitudes toward usury.

Romans, like Greeks, regarded loans at interest as a fact of life. But what was an element in the general prosperity of Greece brought misery and revolt to Rome.⁵⁸ Whereas in Greece loans at interest served primarily to finance commercial enterprises, in Rome

⁵⁷ Demosthenes, Phorm., 51-52, and Pant., 53-54.

⁵⁸ Cf. Tacitus, Annales, VI, 22.

they served to supply the daily expenses of small farmers, to satisfy previous debts and to pay tribute. The plight of the debtor was tragic in the first centuries of the Republic because of the unscrupulous practices of the ruling patricians. As late as 326 B.C. creditors had power over the person of the debtor,⁵⁹ whom they could sell or even put to death if he failed to satisfy them.

While Roman literature castigated the greedy usurer, it rarely questioned the legitimacy of interest-taking.⁶⁰ Even those who were severe on usurers did not themselves hesitate to be lenders.⁶¹

The state sought to remedy the plight of debtors through a whole series of varied enactments from Leges duodecim Tabularum to the Codex Justinianus; its efforts were usually in vain. It even tried to abolish interest-taking, but the prohibition did not work.

Tacitus (c. 55 A.D. - after 115) describes the beginnings of Roman legal involvement in the usury problem in the sixth book of his Annales.⁶²

⁵⁹ The Law Poetelia Papiria (326 B.C.) took away this right. Cf. A. Berger, "Lex Poetelia Papiria," Realencyclopädie, Suppl. VII, 405-409.

⁶⁰ Seneca does disapprove of usury in passing. He refers to the practice in De Beneficiis, VII, 10, 3, and labels it an unnatural form of human greed, but unfortunately he does not develop the argument: "Quid enim ista sunt, quid fenus et calendarium et usura, nisi humanae cupiditatis extra naturam quaesita nomina?"

⁶¹ E.g., Cato the elder and Cicero. Cf. Plutarch, Vitae Parallelae ("Marcus Cato"), XXI, 6, and Cicero, Epistulae ad Atticum, V, 21.

⁶² Tacitus, Annales, VI, 16 (Loeb transl.).

The curse of usury, it must be owned, is inveterate in Rome, a constant source of sedition and discord; and attempts were accordingly made to repress it even in an older and less corrupt society. First came a provision of the Twelve Tablets that the rate of interest, previously governed by the fancy of the rich, should not exceed unciario faenore; later a tribunician rogation lowered it to one-half of that amount; and at length usufruct was unconditionally banned; while a series of plebiscites strove to meet the frauds which were perpetually repressed, only, by extraordinary evasions, to make their appearance once more.

Unfortunately, Tacitus' account was written long after the events described. Sources from this earlier period are sparse, so that many details are not clear. The first legal intervention mentioned took place c. 451-449 B.C. through the famous Leges duodecim Tabularum. The tablets are of immense importance since they provided the foundation for the whole fabric of Roman Law. They mark a critical point in the conflict between the patricians and plebeians. The plebeians compelled the codification and promulgation of what had formerly been customary law administered and interpreted by the patricians. The eighth tablet took up the problem of exorbitant rates of interest.⁶³

...No person shall practice usury at a rate of more than one-twelfth.

Authors have argued endlessly over the meaning of unciario

⁶³ A.C. Johnson, P. R. Coleman-Norton and F.C. Borne, Ancient Roman Statutes (Austin: University of Texas Press, 1961), p. 16.

faenore,⁶⁴ the rate prescribed by the eighth tablet. While there have been some extreme estimates (both 1% and 100% have been proposed as the annual rate),⁶⁵ the rate at this early period was probably 8 1/3% or 10% a year.⁶⁶

In 357 B.C. the Lex Duilia Menenia, not mentioned in the text quoted above from Tacitus, reaffirmed the prescription of the Leges duodecim Tabularum. Livy (59 B.C. - 17 A.D) tells of the enactment,⁶⁷ but it is not clear whether the new law was necessary simply because the Leges duodecim Tabularum had been ignored or because laws in the intervening time had allowed higher rates. Anyway the rate in 357 was the unciario faenore again (or still).

Livy relates that between these two legal prescriptions concerning the rate of interest the Lex Licinia Sestia (c. 375 B.C.) had sought to deal with the usury problem more directly:⁶⁸

⁶⁴ The exact rate of interest is not especially relevant to the topic under discussion. For a detailed presentation of the various opinions, cf. Caillemer and Baudry, 1224f., and especially Klingmüller's outstanding article, "Fenus," in Pauly-Wissowa (Realencyclopädie, VI², 2187-2205; cf. 2189-2192); henceforth, RE.

⁶⁵ Caillemer and Baudry, 1224. An annual rate of 1% could hardly have brought about the huge social unrest that usury caused in Rome. On the other hand, a rate of 100% is so oppressive that it is difficult to imagine how both Tacitus and Livy could consider it an improvement of the debtor's lot (cf. Tacitus, Annales, VI, 16; Livy, VII, 16).

⁶⁶ Klingmüller, 2192. The base for computing the interest is not certain; therefore, either annual rate is possible.

⁶⁷ Livy, VII, 16.

⁶⁸ Livy, VI, 35, 1-5 (Loeb transl.).

An opportunity for innovation was presented by the enormous load of debt, which the plebs could have no hope of lightening but by placing their representatives in the highest offices. They therefore argued that they must gird themselves to think of this: with toil and effort the plebeians had already advanced so far that it was in their power, if they continued to exert themselves, to reach the highest ground, and to equal the patricians in honors as well as in worth. For the present it was resolved that Gaius Licinius and Lucius Sextius should be elected tribunes of the plebs, a magistracy in which they might open for themselves a way to the other distinctions. Once elected, they proposed only such measures as abated the influence of the patricians, while forwarding the interest of the plebs. One of these had to do with debt, providing that what had been paid as interest should be deducted from the original sum, and the remainder discharged in three annual installments of equal size.

While the Lex Licinia Sestia aimed to reduce the debtor's burden by cutting his payments and spreading them out, a law in 347, the second of those mentioned above in Tacitus' Annales, reduced the interest-rate. Livy gives the details:⁶⁹

The same peaceful conditions continued at home and abroad during the consulship of Titus Manlius Torquatus and Gaius Plautius. But the rate of interest was cut in half (semiunciarium tantum ex unciario fenus factum), and debts were made payable, one-fourth down and the remainder in three annual installments; even so some of the plebeians were distressed, but the public credit was of greater concern to the senate than were the hardships of single persons.

By 347, then, the legal rate of interest had sunk to 4 1/6% or 5%. Livy's account reflects a political movement seeking to alleviate the debtor's misery through legal action. The movement culminated in the complete abolition of usury.

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Livy, VII, 27, 3 (Loeb transl.).

The Lex Genucia (342), the third of those mentioned above in Tacitus' Annales, prohibited usury altogether. Livy mentions the prohibition briefly:⁷⁰

In addition to these transactions, I find in certain writers that Lucius Genucius, a tribune of the plebs, proposed to the plebs that it should be unlawful to lend at interest.

The law seems to have had little lasting practical effect. As a matter of fact, its very existence has been contested⁷¹ because it fits in so poorly with what we know of the conditions of the time. But that the law did exist seems certain (it is very well attested in Tacitus, VI, 16; Livy, VII, 42, 1; and Appian, Bella Civilia, I, 54).⁷² On the other hand, it also seems certain that it was honored more in the breach than in the keeping. The law-maker had tried, and failed, to eliminate what was already a necessary part of the Roman economy.⁷³

While much of the data from this early period of Roman history is fragmentary and details are meager, it is rather clear that the laws concerning interest-taking were generally not obeyed,⁷⁴ as was the case with the Lex

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Livy, VII, 42, 1 (Loeb transl.).

⁷¹
Klingmüller, 2192-93.

⁷²
The Lex Marcia, probably from the same period, also gave the debtor legal action against the usurer. Gaius, Institutiones, IV, 23, relates: "Other statutes, however, set up procedure by manus iniectio, ... the L. Marcia against usurers provided that if they had exacted interest, proceedings by manus iniectio should be taken against them for repayment."

⁷³
Cf. P. Louis, Ancient Rome at Work, translated by E. Wareing, (N.Y.: Barnes and Noble, 1965), p. 87; also, Caillemer and Baudry, 1226, and Klingmüller, 2194.

⁷⁴
Louis, p. 87.

Genucia. The legal rate of interest was regarded more as a minimum than a maximum. Exorbitant rates sowed seeds of discord. Popular uprisings resulted, and several times the plebeians refused to fight in Roman wars unless something were done about the condition of debtors.⁷⁵ Reform legislation ordinarily followed the outbreak of public hostility, but only to be met with general disregard by the money-lenders. The problem of the debt-ridden poor would plague Rome throughout its entire history.

Legal prohibitions could easily be eluded. Creditors could lend through the Latins, whom Roman Law did not generally touch (just as in Greece the Metics were often used to circumvent burdensome prescriptions). Naturally, creditors took advantage of the legal loopholes. The Lex Sempronia (193) attempted to check abuses by making the Latins declare all debts in which they had an interest.⁷⁶

Other laws focused more directly on the debtors' unsolved problems. The Lex Flaminia minus solvendi (217) allowed borrowers to pay off their debts with money of reduced value.⁷⁷ In 88 B.C. the Lex Cornelia de Sulla returned to the rate of interest set by the Twelve Tablets.⁷⁸ The

⁷⁵ The secessions of 495 and 286 produced at least temporary reforms. Cf. Louis, p. 87.

⁷⁶ A. Berger, "Leges Semproniae," RE, Suppl. VII, 412-13.

⁷⁷ Berger, "Lex Flaminia," RE, Suppl. VII, 394-95. There is some doubt, however, about the content of this law.

⁷⁸ Berger, "Law Cornelia," Encyclopedic Dictionary of Roman Law (Phila.: American Philosophical Soc., 1953), p. 550.

Lex Valeria (86) allowed bankrupt debtors to satisfy their creditors
by repaying 1/4 of what they owed.⁷⁹

Shortly after this time, as commerce with Greece and Asia
Minor increased, the Romans began to adopt the longstanding Greek
practice of 1% a month (12% a year) as the rate of interest on loans.
Around the year 71 Lucullus made that the maximum rate for Asia and
Cilicia.⁸⁰ As in Greece, the rate for maritime loans remained completely
free. Cicero imitated Lucullus' practice in Cilicia.⁸¹ His writings give
valuable details about interest-rates and the practices of money-lenders.
They show that around the year 60 a man of good name could borrow for
as little as 4%, but that shortly after the middle of July, 54 B.C., the
rate jumped to 8%.⁸² 12% was the highest honorable rate; this became the
legal maximum in Rome in 51 B.C.⁸³ The perennial, high-priced money-
lender remained, however. Verres lent at 24%.⁸⁴ Brutus and his agents
lent at 48%.⁸⁵ High rates kept the greedy money-lender in public odium, but
the taste of profit made odium easier to live with. Cicero remarks about

⁷⁹ E. Weiss, "Leges Valeriae," RE, 12², 2417.

⁸⁰ Plutarch, Vitae Parallelae ("Lucullus"), 20, 35; Appian, De Bello Mithridatico, 62, 63, 83.

⁸¹ Cicero, Epistulae ad Atticum, V, 21 (henceforth, Att.).

⁸² Cicero, Att., IV, 15.

⁸³ Cicero, Att., V, 21.

⁸⁴ Cicero, Actio in Verrem, II, iii, 71.

⁸⁵ Cicero, Att., V, 21; VI, 2.

86
Scaptius, one of Brutus' agents:

The bystanders all declared that the conduct of Scaptius was outrageous in refusing 12 percent with compound interest. Others said he was a fool. He seemed to me to be more of a knave than a fool: for either he was not content with 12 percent on good security, or he hoped for 48 percent on very doubtful security.

How huge interest payments could get becomes evident from another of Cicero's accounts:⁸⁷

Pompey has more influence than anyone for many reasons and because it is rumored that he will come to conduct the war against the Parthians. Even to him, however, payment is made on the following terms. On every thirtieth day some £8000 is paid and that by tribute imposed on the king's subjects. Even such a sum will not cover the amount of monthly interest. However, our friend Gnaeus (Pompey) is an easy-going creditor. He is willing to forego his capital and is content with interest, and that not in full. The king pays no one else and has no means to pay. He has no treasury and no regular tribute: he levies taxes on the method of Appius. They are scarcely sufficient to pay the interest on Pompey's money.

While 12% remained the legal maximum for centuries, rates varied from place to place. Lower rates, 6% for example, were quite common where security was good.⁸⁸ As ever, higher rates were common too.⁸⁹

⁸⁶ Cicero, Att., V, 21 (Loeb transl.).

⁸⁷ Cicero, Att., VI, 1 (Loeb transl.).

⁸⁸ Pliny, Epistulae, VII, 18; Pliny the Elder, Historia Naturalis, XIV, 56.

⁸⁹ Juvenal, Satura, V, 6-8.

Around 112 A.D. Pliny the Younger sought to lower the rate of interest (which was still 12%) in order to encourage borrowing in his province. He feared that the money in the provincial treasury would lie idle because, all things being equal, people preferred to borrow from private persons rather than municipalities. So he wrote to Trajan asking that the rate of interest be lowered. Trajan replied:⁹⁰

I also, my dearest Secundus, discern no other remedy than that the rate of interest shall be lowered that the public money may be invested more readily. The moderation of this rate you shall determine in accordance with the number of those who will borrow.

Other attempts at restricting interest more generally took place. The Emperor Constantine issued a very specific decree on April 17, 325:⁹¹

If a person should lend farm products, either liquid or dry, to those who need them, he shall receive a third additional part as interest; that is, if the sum credited should be two measures, he shall gain a third additional measure. I. But if, on account of the advantage of the interest, a creditor should refuse to accept payment of the debt when he is formally notified, he shall be deprived not only of the interest but also of the principal of the debt. II. This law shall pertain to farm produce only, for a creditor is forbidden to receive more than one per cent for money lent on interest.

⁹⁰ Pliny, Ep., X, 55 (Loeb transl.).

⁹¹ Codex Theodosianus, II, 33, 1 (henceforth, Cod. Theod.)
The 1% rate here referred to is monthly (i.e., 12% per year). (The translation of the Theodosian Code used here and elsewhere is that of Clyde Pharr. Cf. C. Pharr, The Theodosian Code and Novels and the Sirmondian Constitutions [Princeton: Princeton Univ. Press, 1952]).

A series of laws aimed at viri illustres. Alexander Severus (222-235)⁹² prohibited senators from taking interest, but allowed them gratuities.

Severus' law was soon set aside by another permitting senators 6%.⁹³

In 397 stricter voices prevailed, and senators were again forbidden⁹⁴ to take interest. They easily evaded the law by making loans in the

name of a minor son, so in 405 the emperors Arcadius and Honorius⁹⁵ returned to the more moderate position of allowing senators 6%.

Abuses continued to arouse legal reaction. Anatocism, which had awakened adverse public sentiment in Greece without being formally prohibited, was forbidden at least in some cases in Rome.⁹⁶

A very important reform law put a ceiling on the accumulation of interest,⁹⁷ so that it could not mount higher than the capital. In 284 Diocletian imposed the penalty of infamy on those who took illegal interest.⁹⁸ In 386 Theodosius the Great decreed that usurers must pay a penalty of four-⁹⁹fold the amount of illegal interest that they had taken:

⁹² Klingmüller, 2198.

⁹³ Ibid.

⁹⁴ Cf. Cod. Theod., II, 33, 3.

⁹⁵ Cod. Theod., II, 33, 4.

⁹⁶ Codex Justinianus, IV, 32, 28 (henceforth, Cod. Just.).

⁹⁷ Cod. Theod., IV, 19, 2; Justinian, Novellae, 121 (henceforth, Nov. Just.).

⁹⁸ Cod. Just., II, 12, 20.

⁹⁹ Cod. Theod., II, 33, 2.

If any person, taking advantage of the necessity of a debtor, should extort anything beyond the one percent (per month) allowed by law, he shall immediately, without delay, restore what was rapaciously taken, and he shall be obligated to pay fourfold the amount as a penalty. But those persons who are detected as guilty of having acted with equal madness by making excessive demands in any transaction before the issuance of this law shall restore twofold the extorted sum.

Theodosius, while recognizing the importance of credit transactions and protecting them legally, shows a distinct dislike for greedy creditors. In a law of June 17, 380, providing for penalties if a debtor still refuses to pay even after a legal judgment has been handed down against him, the emperor writes:¹⁰⁰

Of course, provision must be made on the other hand also against the notoriously fraudulent trickery of creditors, lest when the person condemned should delay payment, they should begin to hang over him with the hope of double the one percent (per month) interest.

Likewise, one of Valentinian's Novellae, forbidding interest temporarily in Africa because of the destruction wrought by the Vandal invasions, shows a similar disdain for creditors' greed:¹⁰¹

If by every possible kind of humanity it behooves the public sympathy to make wise provision, either in specific cases or in general, for the afflicted fortunes of the Africans, who have been compelled to lose all their resources through very bitter sufferings, how much more fitting it is that their misfortunes should be alleviated by the remedies of Our Clemency against the wicked molestations of their creditors! ... For the same reason of justice, it must also be observed that absolutely no interest for any period of time shall be demanded for money that has been lent to those persons whose misfortunes

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Cod. Theod., IV, 19, 1.

¹⁰¹

Valentinian, Novellae, tit. 12 (transl., Pharr, p. 526).

have been stated above, since it ought to be more than enough for the creditors if, after the restoration of the situation, they can attain the principal of the debt.

¹⁰²
Justinian (483-565) renovated the whole legal treatment of loans at interest, incorporating much previous legislation into his Corpus and showing far-reaching kindness toward the debtor. Without going so far as to suppress interest-taking, as ecclesiastical prohibitions might have suggested,¹⁰³ he reduced the rate of interest to 6% for ordinary loans and even 4% if the lender was a persona illustris. Those involved in commercial transactions could ask 8%. For maritime loans and loans of produce (where terms were often shorter and risks were greater), 12% or 12 1/2% was permitted.¹⁰⁴ Justinian again forbade that interest mount higher than capital,¹⁰⁵ and he strengthened the law against anatocism.¹⁰⁶

He shows the same hostility toward greedy creditors that was seen in Theodosius. In one of his Novellae, limiting the rate of interest to 12 1/2% on farm produce, he writes:¹⁰⁷

¹⁰²

Even though chronologically Justinian comes slightly later than the period with which this work is mainly concerned, nevertheless this brief treatment has been included because his legislation sums up much of what had gone before it (though at the same time changing much of the former legislation).

¹⁰³

Cf. chapter V.

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Cod. Just., IV, 32, 26; Nov. Just., 32.

¹⁰⁵

Cod. Just., IV, 32, 27; Nov. Just., 121.

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Cod. Just., IV, 32, 28.

¹⁰⁷

Nov. Just. (translation by S.P. Scott; cf. his The Civil Law [Cincinnati: Central Trust Co., 1932]), v. 16, p. 185.

We have considered it advisable to correct a most atrocious and inhuman abuse which is far worse than any act of impiety or avarice, and administer a remedy applicable to all persons, not only in this present time of necessity, but throughout all future ages; for it has come to Our ears that certain persons, in the province which you govern (i.e., Thrace), being induced by avarice to take advantage of the public distress, and, having drawn up agreements bearing interest, by which they loaned a small amount of grain, have seized the lands of the debtors, and that, for this reason, some farmers have fled and concealed themselves, others have died of starvation, and pestilence, not less terrible than a barbarian invasion, has, in consequence of the failure of the crops, afflicted the people. Hence we order that all creditors of this kind, no matter what may be the value of the articles which they have loaned...shall hereafter be entitled to receive annual interest on such articles at the rate of the eighth part of a measure for each measure furnished, and must return to the farmers the lands which they have taken in pledge...This law shall apply to all Our subjects, for it is humane and just, it relieves the poor, and affords adequate compensation to creditors.

Justinian limited the rate for monetary loans to farmers to ¹⁰⁸4% and those to churches and pious foundations to ¹⁰⁹3%. In general, a practical concern for the poor marked his legal enactments on usury.

A brief resumé of Roman attitudes toward usury may now be made.

Interest-taking was generally accepted in Rome as it had been in Greece, but here it caused suffering and political unrest among the poor. From the time of the Leges duodecim Tabularum legislation sought to limit interest and aid the poor. Numerous laws over the centuries allowed various restrictive rates; for the most part the laws were ineffective.

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Nov. Just., 32.

¹⁰⁹
Nov. Just., 120.

In the first century B.C. the Greek practice (12%) was adopted for ordinary loans, but maritime loans remained free. Higher rates persisted. In the Christian era, numerous attempts at restricting interest and eliminating abuse took place, especially under Constantine, Theodosius and Justinian, but limited interest-taking remained legal.¹¹⁰

As will be seen, the Greek and Latin Fathers were keenly aware of attitudes toward usury within the Roman Empire. Their writings take these attitudes into account, at times to approve them, at times to condemn them.

¹¹⁰ Interestingly, when the ecclesiastical prohibition of usury finally entered oriental imperial law, it was a disaster. In his *Prochiron Legum*, XVI, 14, Basil the Macedonian (867-886) decreed: "Even though many emperors before us deigned to allow interest-taking, perhaps because of the incorrigibility and crassness of creditors, nevertheless we judge that it ought to be repudiated as unworthy of our Christian state because it is prohibited by divine law. Therefore, Our Majesty decrees that no one has the power to receive interest for any reason whatsoever, lest, while we seem to keep the law of God, we should transgress his precept. But if anyone should receive anything, let it be imputed as a debt to the creditor." Basil's decree caused such havoc that his successor, Leo the Wise (886-911), abrogated it (with great delicacy) and set the maximum rate of interest at 4%: "Certainly it would be excellent and salutary if the human race, being conformed to the laws of the Holy Spirit, had no need for human regulations. Nevertheless as it is not granted to all to be raised up to the heights of the Holy Spirit and to hear the echo of the divine law, but actually there are very few who arrive there through the practice of virtue, we ought to be quite happy if men at least live conformably to human laws. The judgment of the Holy Spirit condemns in an absolute fashion what is called interest on loans of money, and knowing that, the Emperor of eternal memory, our father, decided to forbid, by a special measure, the receiving of interest. But that prohibition became, because of extreme poverty, a cause, not of betterment, as was the legislator's aim, but of perversion..." Leo explained that those who would formerly have lent to the poor, because they could no longer make gains from their loans, became

3. Early rabbinical attitudes toward usury.

In the early centuries of the Christian era, as the Fathers of the Church were beginning to comment on the practice of usury, Jewish writers were not silent. These Jewish sources are of great importance for Christian theology, though they are often neglected. It was among Jews and by Jews that the Christian message was first preached. The ideas that were in circulation in the Palestinian world form the background for what the first Christian teachers said and how they said it. Philo and Josephus, the Mishna and Tosephta, the Siphra on Leviticus, the Siphre on Numbers and Deuteronomy, and the Mekilta on Exodus all provide insights into Jewish thought on usury, roughly from the time of Christ until the beginning of the third century. The Palestinian and Babylonian Talmuds, though compiled up to the fifth and seventh centuries respectively, reflect much of earlier Jewish thinking. It was in the midst of such thinking that Christianity was born. Though the new religion soon became separated from Judaism, Christian and Jewish thought remained in contact with one another not only in the East but in the diaspora as well. It is important, therefore, to know more precisely what early Judaism said about usury.

hard and inhuman toward those who needed their help (cf. the same problem in Dt. 15:3ff. and in Shebi'it, X, 3-5). Moreover, the law led to perjury and, because of the perversity of human nature, to increased misery. Leo concluded: "Without wanting to condemn the law in itself (something which would not please God), granted (as I have said) that human nature cannot attain the sublimity of the law, we abrogate this enactment which was too perfect, and we permit, on the contrary, a return to the practice of loans of money at interest, as the ancient legislators had authorized" (Leo the Wise, Novellae, 83). (Transl. mine).

Talmudic legislation far outdid the Old Testament in discouraging loans at interest. The Jew was to lend freely, asking no interest.¹¹¹ Taking this a step further, the rabbi Gamaliel II¹¹² (T2) even made it a practice to take losses on his loans, accepting reimbursement at whichever price-level was lower, that of the time of lending or of repayment.¹¹³ Laws forbade not just usury, but even what looked like usury.¹¹⁴ Numerous cases were examined and were answered with a severity that went far beyond the biblical prohibition. As in Old Testament times, however, many did break both the letter and the spirit of the law.¹¹⁵ Interest-taking still went on.

¹¹¹ Tosephta to Baba Mezi'a, VI, 18.

¹¹² With few exceptions, it is impossible to date exactly the rabbis mentioned in the Talmud. To aid the reader, the letter and number given in parentheses after the name of a rabbi indicate the relative chronology used by H. L. Strack, Introduction to the Talmud and Midrash (Phila.: Jewish Publication Society, 1931), p. 109ff. The letter indicates the period (here, always T, indicating the earlier Tannaitic period), and the number indicates the generation to which the rabbi belonged:

First Generation of Tannaim - before 90 A.D.
 Second Generation of Tannaim - 90 - 130
 Third Generation of Tannaim - 130 - 160
 Fourth Generation of Tannaim - 160 - 190
 Fifth Generation of Tannaim - 190 - c. 220

For a comparable relative chronology, cf. the index volume of the Soncino Talmud (London: Soncino Press, 1935).

¹¹³ S. W. Baron, A Social and Religious History of the Jews, (9 vols.; N.Y.: Columbia U. Press, 1960), II, p. 250; cf. Baba Mezi'a, V, 8.

¹¹⁴ Cf. Baba Mezi'a, V, 1ff.

¹¹⁵ Cf. Philo, De Virtutibus, 86-87; also, Baron, II, p. 250.

The permission to take interest from the gentiles remained;¹¹⁶
 some, as will be seen, even saw it as a command.¹¹⁷ The 24%
 rate in Egypt of Hellenistic and Roman times and the 50% penalty
 for failure to pay on time were a strong incentive either to break
 the prohibition against usury or to circumvent it through short-term
 loans with high penalties for defaulting.¹¹⁸

The usury prohibition was one of those laws which concerned
 only members of the community. It sought to foster community, to
 strengthen the bonds that gave Israel her identity, to recall to the
 Israelite that his fellow-countrymen were his brothers. When an Israelite
 was in need, his brethren were to come to his aid. The Mekiltha on Exodus
 (c. 2nd cent.) taught that Jews had a positive obligation to lend:¹¹⁹

If Thou Lend Money to Any of My People. R. Ishmael says:
 Every "if" in the Torah refers to a voluntary act except
 this and two others. "And if thou bring a meal-offering
 of first-fruits" (Lev. 2.14) refers to an obligatory act.
 You interpret it to be obligatory. Perhaps this is not so,
 but it is merely voluntary? Scripture, however, says: "Thou
 shalt bring for the meal-offering of thy first-fruits" (ibid.)
 --- it is obligatory and not voluntary. Similarly, "And if thou
 make Me an altar of stone" (Ex. 20.22) refers to an obliga-
 tory act. You interpret it to be obligatory. Perhaps this is
 not so, but it is merely voluntary? Scripture, however, says:
 "Thou shalt build... of unhewn stones" (Deut. 27.6)--- it is
 obligatory and not voluntary. And so also here you interpret:

¹¹⁶

Cf. Philo, De Specialibus Legibus, II, 73.

¹¹⁷

Siphre on Deuteronomy, XXIII, 21, 263; also, XV, 3, 113.

¹¹⁸

Baron, II, 250.

¹¹⁹

Mekiltha on Exodus, "Tractate Kaspā," I (Ex. 22:24-29), I, 1-10
 (transl. by J. Z. Lauterbach, Mekilta [Phila.: Jewish Publication Society of
 America, 1933]).

"If thou lend money" as referring to an obligatory act. You interpret it to be obligatory. Perhaps this is not so, but it is merely voluntary? Scripture, however, says: "Thou shalt surely lend to him" (Deut. 15.8)--- it is obligatory and not voluntary.

In the same vein Rabbi Simeon b. Eleazar (T4) sang the praises of the man who lends without interest and condemned those who refuse to do so.¹²⁰ Likewise the Tosephta to Baba Mezi'a promised¹²¹ a reward to those who lend freely. Philo (c. 30 B.C. -45 A.D.) took up¹²² the same theme in his De Virtutibus:

For along with the capital, in place of the interest which they determine not to accept, they receive a further bonus of the fairest and most precious things that human life has to give: mercy, neighborliness, charity, magnanimity, a good report and good fame. And what acquisition can rival these? No, even the Great King will appear as the poorest of men if compared with a single virtue. For his wealth is soulless, buried deep in store-houses and recesses of the earth, but the wealth of virtue lies in the sovereign part of the soul, and the purest part of existence, heaven, and the all-creating God claim it as their own.

Unfortunately, as Deuteronomy had clearly foreseen,¹²³ the prohibition on interest-taking discouraged lending. Philo recognized the problem in his own time and exhorted his readers to generosity.¹²⁴

¹²⁰ Baba Mezi'a, 71a; henceforth, BM. The letter J will be placed before the abbreviation of a tractate when the citation is from the Gemara of the Jerusalem Talmud.

¹²¹ Tosephta to Baba Mezi'a, VI, 18; henceforth, TBM.

¹²² Philo, De Virtutibus, XIV, 84-85 (Loeb transl.).

¹²³ Cf. Dt. 15:7-11.

¹²⁴ Philo, De Virtutibus, XIV, 82-83 (Loeb transl.).

He forbids anyone to lend money on interest to a brother, meaning by this name not merely a child of the same parents, but anyone of the same citizenship or nation. For he does not think it just to amass money bred from money as their calves are from cattle. And he bids them not to take this as grounds for holding back or showing unwillingness to contribute, but without restriction of hand and heart to give free gifts to those who are in need, reflecting that a free gift is in a sense a loan that will be repaid by the recipient when times are better, without compulsion and with a willing heart.

Yet the prohibition against usury came to be extended

to far more than the taking of interest.¹²⁵ The Siphre on Deuteronomy

declared that not only is all interest forbidden, but anything that looks

like interest, like greeting the debtor or keeping informed about him.¹²⁶

Likewise Rabbi Nathan (T4) commented:¹²⁷

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The Talmud and other Jewish writings distinguish four main types of "increase": 1) קצוצה רבית, or fixed interest; 2) אבק רבית, or "the mere dust of interest"; 3) מוחי כרבית, or "the semblance of interest"; 4) רבית רבית, or interest which is payable by some means other than money. The first of these denotes the ordinary transaction where interest on money is paid directly on a loan. The second denotes some indirect form of interest connected with bargain or sale, even if given more or less gratuitously by the borrower; it also covers cases where a borrower gives something in anticipation of a loan. The sale of futures was prohibited under this second category. The third type of "increase" refers to interest paid out of gratitude for a past loan or out of the desire to induce a future one. The fourth includes many disparate cases, as, for example, when a borrower honors his creditor by allowing him to perform some religious duty in connection with synagogue worship. Cf. J. Abelson, "Usury (Jewish)," Encyclopedia of Religion and Ethics, XII, 557.

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Siphre on Deuteronomy, XXIII, 20, 262; henceforth, SD.

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SD, XXIII, 21, 263 (my transl. from the French of J. Bonsirven, Textes Rabbiniques des Deux Premiers Siècles Chrétiens [Rome: Pontifical Biblical Institute, 1955], p. 76).

The commandment has been formulated to show that there is a type of interest which precedes and a type which follows. How? A man is seeking to borrow from someone and he sends him a present saying, "...so that you might lend to me." That is interest which precedes. A man has borrowed from someone and sends him small coins and a present, saying, "...for your inactive money which I have." That is interest which follows.

The extension of the usury prohibition is especially clear in the fifth chapter of Baba Mezi'a (M).¹²⁸ The term usury takes on a very broad meaning here so that rather common commercial activities fall under the prohibition.¹²⁹ The chapter gives too many cases to list them exhaustively, but some of the details are interesting as examples of how broad the meaning of usury had become.

The creditor may not dwell without charge in the debtor's courtyard or hire it from him at a reduced rate, since that counts as usury.¹³⁰

If a man sold his field and was given a part of the price and said to the buyer, "Pay me (the rest of) the price when you will, and then take what is yours," this is forbidden.¹³¹

None may set up a shopkeeper on the condition of receiving half the profit, or give him money to buy produce with on the condition of receiving half the profit, unless he is paid his wage as a laborer.¹³²

¹²⁸

The letters in parentheses after the name of a tractate indicate whether the citation is from the Mishna (M) or the Gemara (G), which are the two constituent parts of the Talmud. The letters are used only where the origin of the citation is not otherwise obvious.

¹²⁹

Cf. BM, V, 4.

¹³⁰

BM, V, 2. Unless otherwise noted, all citations from the Talmud are from the Soncino version. But, for the text of the Mishna for Baba Mezi'a, the translation is from H. Danby, The Mishnah (London: Humphrey Milford, 1933).

¹³¹

BM, V, 3.

¹³²

BM, V, 3.

Even more interesting are the complicated commentaries of the rabbis on Baba Mezi'a. Through casuistry they refined the meaning of usury even more than the text of the Mishna had done. Some of their comments will be considered shortly in passing, but only a full reading of the Gemara, which it is impossible to reproduce here, will give an adequate picture of the intricacies of usury that were discussed within Judaism.¹³³

The Tosephta to Baba Mezi'a adds case after case involving the broadened concept of usury.¹³⁴ Again, it forbids not just interest-taking, but what looks like usury, even though granting that it might not be. Baba Bathra further illustrates the lengths to which such an understanding of usury could be carried. The following discussion from the Gemara involves the subtle use of the usury principle, believe it or not:¹³⁵

Come and hear! It has been taught: In the case where a man hired a laborer to work for him at the harvesting season for a denarius a day, and paid him his wage in advance, but at that season the laborer was worth a sela' a day he must not derive any benefit from it. If, however, a man hires a laborer to commence work at once and to continue through the harvesting season for a denarius a day, although at the harvesting season he was worth a sela', he is permitted to pay in advance and to have the benefit of the difference.

In the first case there is a difference between the salary given and the price of labor; hence there is usury involved, since the laborer is paying a sela' in labor for every denarius he has received. In the second case the whole period of the contract is considered as one long day. Since during the

¹³³ Cf. The Talmud (London: Soncino Press, 1935), "Nezikin II: Baba Mezi'a," chapter V, p. 361 ff.

¹³⁴ Cf. TBM, IV, 3.

¹³⁵ Baba Bathra, 86b-87a; henceforth, BB.

first days of the period labor was worth only a denarius a day, no higher price need be paid for the other days; hence no usury is involved. In another case Baba Bathra (G) explicitly refuses to apply the usury prohibition to the reciprocation of wedding gifts, so as to allow a person to give a gift of higher value than the one he received.¹³⁶

Baba Kamma does apply the broadened concept of usury to sales transactions. The Gemara states:¹³⁷

Advance payment at present prices may be made for the future delivery of products, but no advance payment at present may be made if the value of the products will subsequently be paid in actual money in lieu of them.

The latter transaction is condemned because it could involve the handing over of a sum of money now in exchange for a larger one later. The Gemara views this as contrary to the spirit of the usury prohibition.

The Mishna carefully lists all those who incur guilt in usurious deals:¹³⁸

These transgress a negative command: the lender, the borrower, the guarantor, and the witnesses. And the Sages say: The scribe also. They transgress the command "Thou shalt not give him thy money upon usury," and "Take thou no usury of him," and "Thou shalt not be to him as a creditor," and "Neither shall ye lay upon him usury," and "Thou shalt not put a stumbling-block before the blind, but thou shalt fear thy God. I am the Lord."

¹³⁶

BB, 145a.

¹³⁷

Baba Kamma, 103a; henceforth, BK.

¹³⁸

BM, V, 11.

Commenting on this text, the Gemara in the Jerusalem Talmud points out the blindness of the usurer who hires a notary and witnesses to attest to his sin.¹³⁹ Similarly the Mekiltha on Exodus condemns everybody who takes part in usury:¹⁴⁰

So far I know only of a warning to the lender and to the borrower. But how would I know of a warning to the guarantor, to the witness, and to the notary? Therefore it says here: "Neither shall you lay upon him interest" --- in any capacity at all. In this connection the sages said: He who lends on interest transgresses five commandments, namely: "Not to give" (Lev. 5.37), "and not to take" (Lev. 5.36), "Thou shalt not be to him as a usurer" (Ex. 22.24), "Neither shall you lay upon him interest" (Ex. 22.24), and "nor put a stumbling-block before the blind" (Lev. 19.14). And just as the lender and the borrower transgress five commandments, so also do the guarantor and the witnesses and the notary. R. Judah would exempt the notary. R. Meir says: He who lends on interest, saying to the scribe: "Come and write," and to the witnesses: "Come and sign," has no share in Him who decreed against taking interest.

For further applications of the usury principle in rabbinical writings, there are ample examples in Baba Mezi'a, V, 7ff., the Tosephta to Baba Mezi'a, 4, 4-5 and 9-25, 'Arakin, IX, 2-4, and Baba Bathra, 87a.¹⁴¹ All of these texts are available in translation. They apply the usury principle to prices, wages, sale of inheritances, partnerships, advance payments, rents, and other transactions.

¹³⁹

JBM, V, 11d.

¹⁴⁰

Mekiltha on Exodus, XXII, 24.

¹⁴¹

Cf. I. Epstein (ed.), The Babylonian Talmud (London: Soncino Press, 1948-52), or Danby, op. cit.

In line with its recommendations to lend generously to fellow-Israelites and its deep concern over dealings which might even appear usurious, the Talmud exhorts the creditor to great delicacy toward debtors. It warns him not to wound them, nor to seek profit from debts subtly by imposing unfavorable conditions. Rabbi Simeon b. Johai (T3) even states:¹⁴²

If a man does not usually greet another first, he ought not to do so because he has lent him a mina. You can deduce this from Dt. 23.20: "You shall not take usury." Everything which can be usury, even a word, is forbidden.

Dealings with foreigners, however, were different. In his De Specialibus Legibus Philo comments on the difference in attitude:¹⁴³

He does not allow them to exact money from their fellow-nationals, but does permit the recovery of dues from the others. He distinguishes the two by calling the first by the appropriate name of brethren, suggesting that none should grudge to give of his own to those whom nature has made his brothers and fellow-heirs. Those who are not of the same nation he describes as aliens, reasonably enough, and the condition of the alien excludes any idea of partnership...

The Siphre on Deuteronomy goes a step further and states that to demand interest from an alien is a positive command.¹⁴⁴

¹⁴² BM, 75b (my transl. from Bonsirven, p. 462).

¹⁴³ Philo, De Specialibus Legibus, II, 73 (Loeb transl.).

¹⁴⁴ SD, XXIII, 21, 263; XV, 3, 113.

Numerous practical applications of the law regarding
foreigners are available from the Tosephta to ¹⁴⁵Baba Mezi'a.

In case after case what is forbidden in relation to the Israelite
is allowed in relation to the alien. Interestingly, a prescription
in the Tosephta deals with a ruse analogous to the practice used
to circumvent the law in Greece and Rome: an alien may not charge
interest if he is using an Israelite's money. ¹⁴⁶

It is quite clear that the practices of Jews who lent to
foreigners were notorious at a very early date, though this fact
has sometimes been disputed. ¹⁴⁷ In a papyrus from Egypt in 41 A.D.,
a certain Serapion counsels a young man, Heracleides, to be careful
with creditors and not to fall into the hands of the Jews: Βλέπε
σατὸν ἀπὸ τῶν Ἰουδαίων ¹⁴⁸

While the law forbade "iron terms" toward Jews, it allowed
them toward foreigners. ¹⁴⁹ This permission refers to the type of
contract where A sells B a field or flock, demanding that B share
the profits from the field or flock until he has made full payment, and
where B in the meantime bears the burden of all losses. In such a case
A's security was like "iron." But this was obviously usury in the broad
sense of the rabbis, since B was forced to give more than what he had
received. Clearly B was the owner of the field or flock since he had

¹⁴⁵

TBM, V, 15-17, 19-21.

¹⁴⁶

TBM, V, 20.

¹⁴⁷

Cf. the comments of M. -J. Lagrange, Le Judaïsme avant Jésus-Christ (Paris: Gabalda, 1931), p. 520.

¹⁴⁸

U. Wilcken, Archiv für Papyrusforschung, IV (1907), p. 567.

¹⁴⁹

BM, V, 6; TBM, V, 14; Bekoroth, 16b.

bought it and bore the burden of all losses, but he was being compelled to pay an additional portion of the profits anyway. Such a transaction was permitted only if B were a foreigner.

Even in loans among Jews, however, interest was not absolutely forbidden by the rabbis. In the Tosephta to Baba Mezi'a, for example, we find the prescription:¹⁵⁰

A man can borrow at interest from a woman and her children only to aid them by the interest.

In this case charity allows for a usurious deal. Rabbis disputed over a second case mentioned in the Gemara of the Jerusalem Talmud:¹⁵¹

You meet the case of a house situated in a fortified city. A person can rent it and then buy it the following year. The rent received is a type of interest permitted by the Torah. R. Meir says that it is not true interest, while R. Judah says that it is interest, but is permitted by the Torah...R. Hezekiah makes this remark: they say that this is interest permitted by the Torah. If it permits interest here, what about elsewhere?

It is evident from the text that Rabbi Judah (T4) did not see the prohibition as absolute, since to his mind the Torah could permit exceptions. Rabbi Hezekiah's (dates uncertain, seems post-Tannaitic) question reflects the casuistic method that was already present in Deuteronomy and Leviticus

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TBM, V, 15 (my transl. from Bonsirven, p. 472).

¹⁵¹

JBm, V, 10b (my transl. from Bonsirven, p. 460).

and that will play a major role in introducing new insights into the usury question in the late middle ages.

But while the rabbinical prohibition against usury is not absolute, it is certainly very grave. Usury is at times made equivalent to denying God. The Gemara of the Babylonian Talmud quotes Rabbi Jose (T3) as saying:¹⁵²

Come and see the blindness of the man who lends at interest: ...if someone gets together witnesses, a notary and ink, and writes and signs (a contract), he denies the God of Israel.

In almost the same words the Gemara of the Jerusalem Talmud labels interest-taking as denial of Yahweh:¹⁵³

Come and see the blindness of those who lend at interest: if anyone calls another an idolator, an incestuous man or a murderer, the other seeks vengeance on his life; but doesn't one who hired a notary and witness and tells them to attest (a usurious contract) deny the Place? This brings out that everyone who lends at interest denies the Principle.

Reading these two texts in the light of the Gemara on Sanhedrin¹⁵⁴ and the Tosephta to Aboda Zara,¹⁵⁵ it is very striking how grave some of the rabbis considered the sin of usury to be. A Jew was permitted to violate

¹⁵²

BM, 71a (my transl. from Bonsirven, p. 461).

¹⁵³

JBM, V, 11d (my transl. from Bonsirven, p. 462).

¹⁵⁴

Sanhedrin, 74a.

¹⁵⁵

Tosephta to Aboda Zara, I, 10.

the ordinances of the Torah if he were threatened with death, but he was forbidden to do so in cases of idolatry, immorality and bloodshed. The text given above from the Jerusalem Talmud alludes to these three special cases and connects usury with idolatry, the most serious of sins. So grave was the prohibition of idolatry that it was regarded as "equal in weight to the whole Torah."¹⁵⁶ To drive home their general teaching on idolatry the rabbis formed practical regulations which aimed at lessening the likelihood that Jews would be contaminated with pagan practices. To the modern reader their measures might seem extreme, but they worked from the principle that prevention was better than cure. A book like Aboda Zara gives flesh to this principle through multiple minute regulations. The Gemara expresses its working philosophy in an aphorism:¹⁵⁷ "Keep off, we say to a Nazirite; go round the vineyard and come not near to it." Just as the Nazirite could avoid the fruit of the vine by avoiding the vineyard itself, so also could the Jew be preserved from idolatry by being preserved from any idolatrous object. The Tosephta to Aboda Zara applies this principle to usury by forbidding business dealings that involved any money that had formerly been gained from usury.¹⁵⁸ The connection of usury with idolatry makes rabbinical efforts to avoid even what looked like usury much more understandable.

¹⁵⁶ Sanhedrin, 74a; Horayoth, 8a.

¹⁵⁷ Aboda Zara, 58b.

¹⁵⁸ Tosephta to Aboda Zara, I, 10-11.

In the opinion of the rabbis usury was also equivalent
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to the shedding of blood. Frequently Jewish writers upbraided the
usurer for his savagery. Philo was particularly outspoken. In his
De Virtutibus he wrote:¹⁶⁰

But there are some who have reached such a pitch of depravity that, when they have no money, they supply food on loan on condition that they receive in return a greater quantity than they gave. It would be a long time before you would catch these people giving a free meal to beggars since they create famine when they have plenty and abundance and draw a revenue out of the wretches' empty stomachs and as good as measure out food and drink on a balance to make sure that they do not overweight the scale. So then he absolutely commands those who shall be members of his holy commonwealth to discard such methods of profit-making, for these practices show the marks of a slavish and utterly illiberal soul transformed into savagery and the nature of wild beasts.

With even more bite, his De Specialibus Legibus emphasized
the same point:¹⁶¹

Now lending money on interest is a blameworthy action, for a person who borrows is not living on a superabundance of means, but is obviously in need, and since he is compelled to pay the interest as well as the capital, he must necessarily be in the utmost straits. And while he thinks he is being benefited by the loan, he is actually like senseless animals suffering further damage from the bait which is set before him. I ask you, Sir Moneylender,

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Temurah, 6b.

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Philo, De Virtutibus, 86-87 (Loeb transl.).

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Philo, De Specialibus Legibus, II, 74-77 (Loeb transl.).

why do you disguise your want of a partner's feeling by pretending to act as a partner? Why do you assume outwardly a kindly and charitable appearance but display in your actions inhumanity and a savage brutality, exacting more than you lend, sometimes double, reducing the pauper to further depths of poverty? And therefore no one sympathizes when in your eagerness for larger gains you lose your capital as well. In their glee all call you extortioner and money-grubber and other similar terms, you who have lain in wait for the misfortunes of others, and regarded their ill-luck as your own good luck. It has been said that vice has no sense of sight; so too the money-lender is blind, and has no vision of the time of repayment, when it will hardly be possible, if at all, to obtain what he has expected to gain by his greed. Such a person may well pay the penalty of his avarice...

The rabbis looked at the usury prohibition as intimately connected with Israel's covenant with Yahweh. The Siphra on Leviticus states:¹⁶²

I have brought you out of Egypt on the condition that you accept the commandments on usury. Whoever professes them professes the exodus from Egypt, and vice-versa.

From this it followed that the breaking of the prohibition had brought about the subjection of Israel to her enemies, since this was a necessary consequence of unfaithfulness to the covenant. The Gemara of Sukkah draws this conclusion:¹⁶³

¹⁶² Siphra on Leviticus, XXV, 38 (my transl. from Bonsirven, p. 46).

¹⁶³ Sukkah, 29a, b.

The homes of the Israelites have been delivered to the empire because of four faults: on account of those who retain in their possession bills which have been paid (in the hope of claiming them again); on account of those who lend money on usury; on account of those who had the power to protest against wrongdoing and did not protest; and on account of those who publicly declare their intention to give specified sums for charity and do not give.

So abhorrent was usury to the rabbis and so self-defeating in their eyes was borrowing at interest, that some recommended selling one's daughter into slavery rather than becoming implicated in a usurious deal. The Gemara on 'Arakin' records that R. Huna (216-297 A.D.) offered this advice:¹⁶⁴

...he teaches us that a man should rather sell his daughter than borrow on usury; for in the former case she goes on making deductions and goes out free, whereas here the debt becomes even larger.

The rabbis saw that the daughter's work would count toward the payment of the debt, so that eventually, when the balance was paid, she would be free again. A loan at interest, on the other hand, would just keep mounting higher and higher and would worsen the debtor's lot rather than improve it.

Considering usury equivalent to robbery, the rabbis excluded the money-lender from being a witness or a judge. Sanhedrin (M)¹⁶⁵

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'Arakin, 30b.

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Sanhedrin, III, 3.

classes the usurer with the gambler, the pigeontrainer (probably a man who lured birds from another man's dove-cote by means of decoys), and the trader who carried on operations during the sabbatical year. None of these might be judges or witnesses. The disqualification is based on Ex. 23:1: "Put not your hand with the wicked to be an unrighteous witness." This text had been applied to robbers and was used to exclude them from the two offices. The rabbis consider all those listed in Sanhedrin as worthy of the same treatment.

Like the Old Testament, rabbinic literature did not consider the usury question in terms of justice. As seen in the second chapter, the Old Testament was concerned with the bond of brotherhood and charity toward the poor in its explanation of the prohibition of usury. Rabbinic writings develop the same ideas. When the question of restitution arose, rabbis disputed whether or not interest had to be returned, but neither side in the argument argued from considerations of justice. The Gemara of Temurah describes the dispute:¹⁶⁶

... wherein do Abaye and Raba really differ? --- They differ in the case of stipulated usury [where the creditor arranges for a fixed amount of interest on a loan] ... For R. Eleazar said: Stipulated usury can be reclaimed through the judges, whereas the dust of usury [i.e., indirect usury, as when a man sells his field and says to the buyer that if he pays him at once the price will be so much, but if he pays later, the price will be more] cannot be reclaimed through the judges.

¹⁶⁶ Temurah, 6a, b. The explanations in brackets are mine (based on notes accompanying the Soncino translation).

R. Johanan, however, says: Even stipulated usury is not reclaimed through the judges. ... R. Isaac said: What is the reason of R. Johanan? Scripture says: "He hath given forth upon usury and hath taken increase: shall he then live? He shall not live," thus intimating that the taking of usury is a matter that affects life but is not subject to restoration. ... Lenders on interest are compared to shedders of blood. Just as shedders of blood cannot make restoration of the lives lost, so lenders on interest are not required to make restoration of interest.

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The Gemara treats restitution in several other places, as does the Tosephta to Baba Mezi'a,¹⁶⁸ but perhaps most interesting of all is the discussion in Baba Kamma. It brings out clearly that even when restitution is demanded, the demand does not arise from principles of justice. After mentioning various opinions on restitution, the Gemara states:¹⁶⁹

Come and hear: Robbers and usurers even after they have collected the money must return it. But what collection could there have been in the case of robbers... It must there read as follows: 'Robbers, that is to say usurers, even after they have already collected the money, must return it.' --- it may, however, be said that though they have to make restitution of the money it would not be accepted from them. If so why have they to make restitution? --- To make it quite evident that out of their own free will they are prepared to fulfill their duty before Heaven.

While upholding restitution here, however, Baba Kamma denies the need for it in both an earlier and later passage concerning the children of the

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Cf., e.g. BM, 61b; BB, 94b.

¹⁶⁸

TBM, V, 21-25.

¹⁶⁹

BK, 94b.

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usurer. If the consideration were one of justice, the change would
be incomprehensible. The later passage reads: ¹⁷¹

R. Adda b. Ahabah read the statement of Rami b. Hama with reference to the following teaching: "If their father left them money acquired from usury they would not have to restore it even though they definitely know that it came from usury."... (Raba said:) Here there is a special reason, as Scripture states: Take thou no usury of him or increase, but fear thy God that thy brother may live with thee, as much as to say, 'Restore it to him so that he may live with thee.' Now, it is the man himself who is ~~thus~~ commanded by Divine Law, whereas his son is not commanded by Divine Law (to make restitution).

Even though the goods can be identified with certainty, the children of the debtor are excluded from any obligation of restitution because they do not fall under the positive divine command. Such a line of reasoning obviously does not revolve around justice-principles.

This is also the case with Rabbi Meir's (T3) opinion. He held the strict view that the usurer should lose everything --- principal and
¹⁷² interest; but Baba Bathra ¹⁷³ (G) makes it clear that this is a case of a penalty imposed on the whole for the sake of its part. Anyway the Sages

¹⁷⁰
Cf. BK, 94b (earlier) and 112a.

¹⁷¹
BK, 112a.

¹⁷²
BK, 30b; BB, 94b.

¹⁷³
BB, 94b.

disagreed with Rabbi Meir and demanded only that the interest be given back. But again Baba Bathra (G) calls this a penalty,¹⁷⁵ not restitution demanded in justice.

Finally, considering all the intricacies of the restrictions involved in the legislation surrounding loans, it is not difficult to imagine that even the generous man might have been discouraged. Deuteronomy had foreseen this situation.¹⁷⁶ The Mishna witnesses that it was a stark reality. But Shebi'ith (M) shows an attempt to adapt the law to the needs of the times.¹⁷⁷ Because the law concerning the sabbatical year (cancelling debts) had paralyzed generosity, Hillel had to enact the law of prozbul by which a creditor could recover a loan at any time. The text is very interesting in that it shows the adaptation of Old Testament law to changing conditions:¹⁷⁸

¹⁷⁴ BM, 72a, and BB, 94b.

¹⁷⁵ BB, 94b.

¹⁷⁶ Dt. 15:7-11.

¹⁷⁷ Shebi'ith, X, 3-6.

¹⁷⁸ Ibid. The usual spelling is כְּרִזְבוּל, though כְּרִזְבוּל, is not uncommon. The word corresponds formally with the Greek προσβολή, but historically it has been difficult to find any meaning of this rather common Greek word which would be applicable to a legal instrument such as the Jewish prozbul. In recent times, however, Greek papyri from Egypt have afforded several instances of a technical juridical usage of προσβολή, so that this seems the best derivation for prozbul. Cf. Ludwig Blau, "Prosbol im Lichte der Griechischen Papyri und der Rechtsgeschichte," in Festschrift zum 50 jährigen Bestehen der Franz-Joseph-Landesrabbinerschule in Budapest (Budapest: Adolf Holzhausen, 1927), p. 96-151; esp., p. 112; S. Krauss,

A loan secured by a prozbul is not cancelled. This was one of the things instituted by Hillel the elder; for when he observed people refraining from lending to one another, and thus transgressing what is written in the Law, 'Beware, lest there be a base thought in thy heart,'...he instituted the prozbul. This is the formula of the prozbul: 'I declare before you, so-and-so, judges of that place, that touching any debt that I may have outstanding, I shall collect it whenever I desire.' And the judges sign below, or the witnesses.

One of the contracts from the caves of Murabba'at¹⁷⁹ provides a recently discovered example of the prozbul. The papyrus is from 55/56 A.D. and concerns a loan of money. If the loan is not paid on time, the borrower will pay 20% interest as a¹⁸⁰ penalty. The creditor retains his right to reimbursement even in the sabbatical year, and if the debtor defaults he may seize his property.

The Jewish outlook toward usury during the early rabbinical period may now briefly be summed up.

Griechische und Lateinische Lehnwörter im Talmud, Midrasch und Targum (Berlin: S. Calvary and Co., 1899), p. 482; G.F. Moore, Judaism (Cambridge, Mass.: Harvard Univ. Press, 1932), III, p. 80.

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Cf. P. Benoit, J. Milik and R. deVaux, Discoveries in the Judean Desert II ("Les Grottes de Murabba'at"), (Oxford: Clarendon Press, 1961), II, p. 100f.

¹⁸⁰

Cf. Lev. 5:16, 24; 27:27.

Contemporary with early Christianity, Talmudic legislation far outdid the Old Testament in discouraging interest-taking. Conversely, it strongly emphasized the obligation to lend freely to the poor man. The rabbis at the same time extended the prohibition against usury to much more than interest-taking; they forbade even what looked like usury. But permission to take interest from the gentiles remained in effect; some even regarded it as a command. Casuistry, moreover, did provide for interest-taking in a few cases even among Jews, so that in practice the prohibition was not absolute. Violation of the prohibition was considered very grave; at times it was seen as equivalent even to the shedding of men's blood and the denial of Yahweh. Like the Old Testament, rabbinic literature did not pose the usury question in terms of justice; it saw it in terms of charity toward the poor, especially where the bond of brotherhood united the poor man with his brethren.

As already noted, it was impossible for the early Christian Church to be unaware of contemporary Jewish writing. The Fathers, as will be seen in the next chapter, were influenced by the teaching outlined above. Clement of Alexandria, Basil and (through Basil) Ambrose quote verbatim from Jewish literature on usury.

CHAPTER IV

THE PATRISTIC TEACHING ON USURY

The New Testament makes no judgment on the morality of usury.¹ Interest is mentioned only in the two accounts of the parable of the talents, in Mt. 25:27 and Lk. 19:23. The central issue of the parable is the dramatic day of reckoning, and in particular the position of the slothful servant whose complacency is so sternly rebuked.² The details of the story are all subordinated to this climactic scene and actually vary considerably in the two versions.³ Receiving interest, a common practice in the Graeco-Roman world, is simply incorporated into the parable, without any statement either for or against its morality.⁴

Positively, however, the New Testament does recommend disinterested charity in lending, even when there is no hope of repayment.⁵ Jesus urges his followers, as the Old Testament had,⁶ not to turn away

¹ Cf. M.-J. Lagrange, *Évangile selon Saint Luc* (3rd ed.; Paris: Gabalda, 1927), p. 196; A. van den Born and L. Hartman, "Loans," *Encyclopedic Dictionary of the Bible*, edited by L. Hartman (N.Y.: McGraw-Hill, 1963), 1361-62.

² C.H. Dodd, *The Parables of the Kingdom* (rev. ed.; N.Y.: Scribner's, 1961), p. 118; Joachim Jeremias, *The Parables of Jesus*, translated by S.H. Hooke (rev. ed.; N.Y.: Scribner's, 1963), p. 61.

³ Dodd, p. 118, and Jeremias, p. 58-59.

⁴ Van den Born, 1361-62.

⁵ Lk. 6:34-35.

⁶ Dt. 15:3ff.

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from those who wish to borrow. One of his positive statements on lending, Lk. 6:34-35, became quite popular with the Fathers in their writings on usury. The Greek text of the saying is as follows:

καὶ εἴν δανείσητε παρ' ὧν ἐλπίζετε
λαβεῖν, ποῖα ὑμῖν χάρις [ἐστίν]; καὶ
ἁμαρτωλοὶ ἁμαρτωλοῖς δανείζουσιν ἵνα
ἀπολάβωσιν τὰ ἴσα. πλὴν ἀγαπάτε
τοὺς ἐχθροὺς ὑμῶν καὶ ἀγαθοποιεῖτε
καὶ δανείζετε μηδὲν ἀπελπίζοντες.

The exact interpretation of the text, especially the words ⁸μηδὲν
⁹ἀπελπίζοντες, is disputed, but regardless of whether this phrase
means "hoping for nothing in return" or "never despairing," ¹⁰the text

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Mt. 5:42.

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Cf. Lagrange, p. 194-96; A. Plummer, A Critical and Exegetical Commentary on the Gospel according to St. Luke ("ICC"), (N.Y.: Scribners, 1914), p. 188; J. Schmid, Das Evangelium nach Lukas ("Regensburger Neues Testament," #3), (Regensburg: Pustet, 1955), p. 136; T. Zahn, Das Evangelium des Lucas ("Kommentar zum Neuen Testament," #3), (Leipzig: Scholl, 1920), p. 292-93.

⁹
Lagrange, p. 195.

¹⁰
Plummer, p. 188

still says nothing about the morality of usury. As Lagrange points out,¹¹ an exhortation to renounce only the interest on loans (which is not what the text says anyway) would be little in conformity with the complete disinterestedness which the whole context (a series of sayings on selfless love) calls for.

Tertullian, Basil, Ambrose, Chrysostom and Jerome all use the text, but, as shall be seen, not in a way that is central to their argumentation.¹² Rather, time and again the Fathers turn directly to two sources as the bases for their teaching on usury: the Old Testament prohibition and the conviction that usury was incompatible with Christian love.

What they said about usury must now be examined.

Among the earliest extant writings denouncing usury in the Greek Church are those of Clement of Alexandria (c.150-215). In his Paedagogus¹³ Clement presents the Logos as the tutor who teaches new converts about the conduct of their lives. The Logos aims to improve the soul, to instruct the Christian in virtue. He trains all those who are God's children by baptism in the basic principle of love. The Logos was active even under the Old Dispensation, which, though based on fear, did not

¹¹ Lagrange, p. 195; cf. also, Schmid, p. 136, and Zahn, p. 292.

¹² Tertullian, for example, sees usury as forbidden in the Old Testament. He views Lk. 6:34-35 as a call to renounce even the principal. Cf. Lib. iv adv. Marcionem, ch. 17 (PL, 2:398-99).

¹³ Paedagogus, I, 10 (PG, 8:364).

exclude love, but rather prepared men for it by educating them to pursue good and to avoid evil. He fulfilled his function as tutor through the law and the prophets. Thus through Ezekiel he said: "...he shall not lend his money at usury..." Quoting Ez. 18:4-9, Clement concludes that the passage is a prophetic description of the Christian life. By following the prohibition of usury, the newly baptized will attain eternal happiness.

In the second book of his Stromateis¹⁴ Clement takes up the usury question again. Attempting to show that the Mosaic Law is the source for all the moral teaching of the Greeks, he adduces the example of the Old Testament teaching on generosity and fellowship. He cites the prohibition of usury as an instance.¹⁵

Regarding generosity and fellowship, though much might be said, let it suffice to remark that the law prohibits a brother from taking usury: designating as a brother not only him who is born of the same parents, but also one of the same race and sentiments, and a participator in the same Logos; deeming it right not to take usury for money, but with open hands and heart to bestow on those who need... We now therefore understand that we are instructed in piety, and in liberality, and in justice, and in humanity by the law.

¹⁴ Stromateis, II, 19 (PG, 8:1014).

¹⁵ Ibid. (transl. mine).

In this passage, as in other parts of the Stromateis, Clement borrows copiously from Philo, whose teaching on usury was examined in the final section of the third chapter. Clement takes the lines quoted above almost verbatim from Philo's De Virtutibus.¹⁶ As noted earlier, Philo, reflecting Jewish tradition on the point, attacked usury fiercely. Through Clement, Basil and Ambrose, he influences the development of Christian thought on the point.¹⁷

Tertullian (c.155-c.220), writing around the beginning of the third century, gives indirect witness to the prohibition of usury. He does not treat the problem as a whole, but takes it up only in passing to refute Marcion.¹⁸ The latter preached the **opposition** of the Old Testament to the New. In response, Tertullian attempts to show the harmony between the Judaic Law and the gospel. He uses the loan at interest as an example. Comparing Lk. 6:34 with Ez. 18:8, he states that the purpose of the law laid down by Ezekiel was to prepare for the gospel, to lead men to the perfect discipline of Christ. The Old Testament prohibited interest (fructus foenoris) in order that men might more

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Cf. Philo, De Virtutibus, XIV, 82-83.

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Philo also influenced Origen, who in turn influenced Ambrose. But although Origen mentions usury in his third homily on Ps. 36 (PG, 12:1347-48), he says nothing conclusive on its morality.

¹⁸

Lib. iv adv. Marcionem, ch. 17 (PL, 2:398-99).

easily form the habit of losing the principal itself (ipsum foenus), according to Our Lord's words in Lk. 6:34: "If you lend to those from whom you hope to receive in return, what reward shall you have?"

While Tertullian treats usury only obliquely in his comparison of the two testaments, he does not view the new law as abolishing the old, but as surpassing it. In his eyes not only does the prohibition of usury remain, but it is now overshadowed by a call that goes beyond it---not even to seek the principal from one who is in need.

A second early indirect witness to the attitude of Christians toward usury is Apollonius (dates uncertain), a bishop in Asia. He wrote probably at the very end of the second century, but none of his writings are extant. Apollonius was a bitter Antimontanist. Both Eusebius¹⁹ in his Historia Ecclesiastica and St. Jerome in his De Viris Illustribus²⁰ relate that he reproved Montanists because they lent money at interest. He scorned them for claiming to be prophets when their conduct stood in open opposition to sacred scripture. Tertullian denied the charge in a lost work, written in Greek, Περὶ Ἐκστράσεως.²¹ St. Jerome quotes Apollonius:

¹⁹ Historia Ecclesiastica, 5, 18 (PG, 20:48).

²⁰ De Viris Illustribus, 40 (PL, 23:655).

²¹ Ibid. (transl. as quoted in J. Quasten, Patrology [Westminster, Md.: Newman, 1953], II, p. 317).

Does a prophet stain her eyelids with antimony? Is a prophet adorned with fine garments and precious stones? Does a prophet play with dice and tables? Does he accept usury? Let them respond whether this ought to be permitted or not, it will be my task to prove that they do these things.

It should be noted that Apollonius does not restrict the usury prohibition to prophets, but simply applies the more general scriptural prohibition a fortiori to them.

In De Lapsis,²² St. Cyprian (c. 200-258) witnesses that the usury problem was quite extensive. He takes up the morality of usury in his popular work, Testimoniorum Libri iii,²³ a compendium of the moral and disciplinary duties of the Christian. The work consists of 120 theses followed by proofs from scripture. Written probably around 249, it had great influence on the future preaching and teaching of the Church. Its scriptural texts were quoted again and again by Commodianus, Lactantius, Firmicus Maternus, Lucifer of Calaris, Jerome, Pelagius and Augustine.²⁴

²²
De Lapsis, VI (PL, 4:470-71).

²³
Testimoniorum Libri iii: ad Quirinum, lib. iii, 48 (PL, 4:759).

²⁴
Quasten, II, p. 363.

In the forty-eight thesis, entitled "Non Foenerandum," Cyprian quotes Psalm 15:5, Ez. 18:7, 8 and Dt. 23:20 to prove that usury is immoral. As shall be seen, these texts especially, along with Lev. 25:35, Ex. 22:25, Dt. 15:3, Neh. 5:11, Jer. 9:6, Ps. 54:12 and Lk. 6:34, recur repeatedly in the later Fathers in their condemnation of interest-taking.

Besides turning to Old Testament texts as a basis for condemning usury, the Fathers, especially in their homilies, develop a second reason why usury is immoral, its incompatibility with Christian love. An early poem written by Commodianus, "*Qui de Malo Donant*,"²⁵ illustrates this strain of thought. Commodianus castigates the usurer for wounding the poor, stealing from the wretched, and giving to others only in order to impoverish them.

Why do you senselessly pretend to be good as you wound others? From what you bestow, another is daily weeping. Do you not believe that the Lord sees those things from heaven? Scripture says, "The Most High does not approve of the gifts of the wicked." You break the wretched when you get a chance. Does a man give gifts that he might make another poor? Or, if you lend at interest, taking twenty-four percent, you want to give alms that you might expiate evil with that which is also evil. The Almighty absolutely rejects such works as these. Your donation has been wrung from tears...O wicked one, you deceive yourself, but no one else.

²⁵ Commodianus, *Instructiones*, 65 (PL, 5:251). The dating of this work is very uncertain. (Transl. mine).

Lactantius attacks the usury problem from a similar viewpoint in the sixth book of his Institutiones Divinae, written before 311. The work is very meager in its use of the Bible, taking what scriptural quotations it does use from Cyprian's Ad Quirinum,²⁶ mentioned above. In the eighteenth chapter Lactantius declares that the just man must be unsparing in the good that he does. He must be sure to number lending among his good works. He must accept nothing from the poor man so that, because he gives freely, his giving might be all the better. To accept more than is lent is to prey on the needs of others and to vitiate any good that has been done.

In his Epitome, written after 314, Lactantius takes up the question again. In the sixty-fourth chapter,²⁷ describing the man who sincerely seeks God and strives after truth, he catalogues the prescriptions he must follow:

He will not steal nor will he even covet another's goods. He will not give money at usury (for this is to make a profit from the ill-fortune of others), nor will he turn down anyone whom necessity forces to borrow.

Like Commodianus, Lactantius considers usury in connection with its effects on the poor. As shall be seen, the great sermons of Basil, Ambrose, Augustine, Gregory of Nazianzen, Gregory of Nyssa and John Chrysostom return to this theme time and again.

²⁶ Lactantius, Institutiones Divinae, 18 (PL, 6:698-99).

²⁷ Epitome, 64 (PL, 6:1076), (transl. mine).

St. Athanasius (c. 295-373) treats usury briefly in his commentary on Ps. 14 (15), 2-5.²⁸ Paraphrasing the psalmist, he asks who will be worthy to dwell with the Lord in his eternal tabernacle. He then lists ten special precepts that men must follow if they want to achieve this goal. They must enter by the way which is Christ himself. They must do justice. They must inflict no injury on the neighbor. Ninth among the precepts, Athanasius places: they must not lend at interest.

The gravity of usury in Athanasius' mind is clear from the context. Violation of the precept excludes a man from eternal life.

In one of his famous catechetical lectures,²⁹ delivered probably around 350, Cyril of Jerusalem (c. 315-387) warns his catechumens briefly about usury. He admonishes them to avoid every diabolical action. The devil can persuade only those who are willing to listen to him; he can force no one to sin. Cyril lists as the snares of the devil: intemperance, avarice and usury.

Hilary of Poitiers (c. 315-c. 367) treats usury as an injury to Christ in the person of the poor man. In his Tractatus in Ps. xiv,³⁰ Hilary states that lending, which should be virtuous, becomes damnable when interest is demanded. Instead of helping the poor man, the usurer just increases his need.

²⁸ Expositio in Ps. xiv, 2-5 (PG, 27:100).

²⁹ Catecheses, IV, 37 (PG, 33:501).

³⁰ Tractatus in Ps. xiv, 15 (PL, 9:307), (transl. mine).

What could be more intolerable than to bestow a benefit on a poor man in such a way that he becomes poorer, or to bring him help only to increase his misery? If you are a Christian, what reward can you expect from God if you do not seek to help men but to harm them? If you are a Christian, why do you scheme to have your idle money bear a return and make the need of your brother, for whom Christ died, the source of your enrichment? ...remember that the person from whom you seek interest is the poor needy man for whom Christ himself became poor and needy. Therefore, whether you do good or evil to the poor man, know that you do it to Christ.

The greatest of the opponents of usury among the Greek Fathers are two of the Cappadocians, Basil the Great (330-379) and Gregory of Nyssa (335-394). Both view interest-taking as oppression of the poor and a violation of a scriptural prohibition.

For Basil the struggle against usury is part of a more general battle fought against the evil practices of the rich. Especially noteworthy are his comments on Psalm 14 (15).³¹

Basil begins with a strong scriptural argument condemning usury, citing Ez. 22:12, Dt. 23:19, Jer. 9:6, Ps. 54:12 and Mt. 5:42.³² He berates the cold creditor who is not moved to see a debtor on his knees begging help, who is not swayed by tears and pleas, but only by the hope of interest. Deceitfully the creditor pretends to lend at lower rates than usual, because of friendship, while seeking to take away even the debtor's liberty (through "voluntary servitude" in case of failure to pay the debt).³³

³¹ Homilia ii in Psalmum xiv (PG, 29:264f.).

³² Homilia ii, 1 (PG, 29:265).

³³ Ibid. (PG, 29:268). The translation of all passages quoted from this work are by Sr. Agnes Clare Way, C.D.P., as given in The Fathers of the Church, ed. by R.J. Deferrari; (Wash.: Catholic Univ. Press, 1963), vol. 46.

Tell me, do you seek money and means from a poor man? If he had been able to make you richer, why would he have sought at your doors? Coming for assistance, he found hostility. When searching around for antidotes, he came upon poisons. It was your duty to relieve the destitution of the man, but you, seeking to drain the desert dry, increased his need. Just as if some physician, visiting the sick, instead of restoring health to them would take away even their little remnant of bodily strength, so you also make the misfortunes of the wretched an opportunity of revenue.³⁴

Basil spends the greater part of the homily attempting to dissuade debtors from borrowing. He describes their temporary elation over their new prosperity---their fancy cloths, rich meals and flattering friends. But as time goes by, interest mounts, bringing with it sleepless nights and joyless days. The debtor thinks of the coming money-lender all day long and dreams of him by night. He awaits the attack like cornered prey. He counts the days till foreclosure, while the creditor counts the growing interest.³⁵

Because of the evils involved in usury, Basil pleads with the debtor not to ~~approach~~ the money-lender. He should give up everything rather than lose his liberty by borrowing. It is far better to raise oneself up little by little through ingenuity and labor, he states, than suddenly to be raised up by someone else, only to be deprived of everything just as suddenly.³⁶

³⁴

Ibid.

³⁵

Homilia ii, 2 (PG, 29:268-69).

³⁶

Ibid. (PG, 29:269).

Are you rich? Do not borrow. Are you poor? Do not borrow. If you are prospering, you have no need of a loan; if you have nothing, you will not repay the loan. Do not give your life over to regret, lest at some time you may esteem as happy the days before the loan. Let us, the poor, surpass the rich in this one thing, namely, freedom from care.³⁷

The poor are free, Basil tells his hearers. They are not solicitous and worrisome as are the rich. But the debtor is both poor and worried. He worries about his possessions. He jumps when a knock comes at the door. He asks nervously who is there. He is covered with perspiration and filled with anxiety. He searches for a way to flee.³⁸

In a passage reminiscent of Aristotle, Basil engages in a play on the Greek word for usury. Usury must be called tokos (i.e., offspring) because of all the evils it engenders. But other offspring grow only until they reach maturity, whereas usury never ceases to grow, bringing with it ever-increasing sorrow.³⁹ More will be said of this strain of argumentation in connection with Ambrose.

Basil declares that the poor man should labor, even beg, rather than go into debt. He describes the terrible plight of debtors he has known:⁴⁰

³⁷ Homilia ii, 3 (PG, 29:272-73).

³⁸ Ibid. (PG, 29:273).

³⁹ Ibid. (PG, 29:273-276).

⁴⁰ Homilia ii, 4 (PG, 29:277).

O, how many have been destroyed by the possessions of other men? How many men, after building castles in the air, have as their only benefit, a loss beyond measure? 'But many,' he says, 'grow rich from loans,' But more, I think, fasten themselves to halters. You see those who have become rich, but you do not count those who have been strangled, who, not enduring the shame incurred by their begging, preferred death through strangling to a shameful life. I have seen a piteous sight, free sons dragged to the market place to be sold because of the paternal debt. You are not able to leave money to your sons? Do not deprive them as well of their dignity.

Finally, in a closing section that resembles Philo's De Virtutibus,⁴¹ Basil appeals to the rich. He begs them to listen to the description of their inhumanity that he has just addressed to the poor. They should give to those from whom they can expect nothing in return (Lk. 6:34). When they give to the poor for the Lord's sake, not only will they give freely, but they will receive a return anyway, for the Lord gives in abundance to those who love the poor.⁴²

In the first of the three so-called "canonical letters"⁴³ sent to Amphilochius, bishop of Iconium, Basil provides interesting information about the status of the usurer in the early church. These letters contain minute ecclesiastical regulations concerning penitential discipline and are very important for its history. They quickly gained universal recognition in the East and acquired the authority of law. In a list of prescriptions Basil takes up the case of a man who has taken usury and now wishes to be

⁴¹ Philo, De Virtutibus, XIV, 82-83.

⁴² Homilia ii, 5 (PG, 29:277-280).

⁴³ Ep. clxxxviii (PG, 32:682).

ordained a priest. He decides that he may be ordained if he is willing to spend the unjust profit on the poor and cease from the practice in the future.

Gregory of Nyssa, the most versatile of the Cappadocians, attacks the usury problem from several directions. Like the other Fathers, he considers usury a violation of charity, but interestingly, he gives a brief statement of the same argument which St. Thomas will later borrow from Aristotle and which will become standard in the Middle Ages.

Turning to the problem in his Homilia iv in Ecclesiasten,⁴⁴

Gregory argues that usury results from an evil union unknown to nature

(ὅτι ποτὲ καὶ στείρας, ἣν ἡ φύσις μὲν οὐκ ἐγνώρισεν),⁴⁵

which has the power to make sterile things bear fruit, even though nature itself has made only animate things fecund. Though Gregory does not develop this argument at length, it is much the same as Aristotle's treatment of interest-taking, discussed earlier. Gregory returns to the theme in his Contra Usurarios:⁴⁶

But you, copper and gold, things that cannot usually bring forth fruit, do not seek to have offspring.⁴⁷

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Homilia iv in Ecclesiasten (PG, 44:671f.).

⁴⁵

Ibid. (PG, 44:672).

⁴⁶

Contra Usurarios (PG, 46:433-452). (transl. mine).

⁴⁷

Ibid. (PG, 46:442), (transl. mine).

As already pointed out, this line of argumentation, based on the sterility of money, was revived a millenium later to support the already long-standing prohibition on usury.⁴⁸

Gregory systematically outlines the evils usury brings to the usurer, the debtor and society. He condemns interest-loans not just to the poor but to the rich;⁴⁹ he condemns not only exorbitant interest but even that allowed by civil law.⁵⁰

Both his Homilia iv in Ecclesiasten and his Contra Usurarios⁵¹ attack usury from the creditor's point of view. The creditor who lends at interest is little better to Gregory than the thief who breaks into homes, though perhaps his methods are smoother. Both the thief and the usurer take away what belongs to others, whether men call that robbery or interest-taking or anything else.⁵² Gregory describes the torments that the usurer himself undergoes. He continually fears about not being paid, even if the borrower is wealthy, for fortunes can soon vanish. He experiences even greater anguish when he lends to merchants,

⁴⁸ Noonan, p. 56.

⁴⁹ Hom. iv in Eccl. (PG, 44:673), and Ep. ad Letoium (PG, 45:234).

⁵⁰ Ep. ad Letoium (PG, 45:234).

⁵¹ Cf. Hom. iv in Eccl. (PG, 44:673) and Contra Usurarios (PG, 46:439).

⁵² Hom. iv in Eccl. (PG, 44:672) and Ep. ad Letoium (PG, 45:234).

since his risk is greater. He watches the debtor anxiously as the date of repayment approaches. "Fathers do not rejoice as much at the birth of children," Gregory states scornfully, "as usurers do at the end of the month."⁵³

Gregory repeats another common patristic theme, that the money-lender increases the need of the borrower rather than diminishing it.⁵⁴ "If there were not such a great multitude of usurers," he writes, "there would not be such a crowd of poor people."⁵⁵ He outlines the grave social consequences that usury entails: multiplication of the poor, ruin of homes, occasion for deceit and debauchery.⁵⁶ He describes how many, steeped in misery and despair, have killed themselves under the burden of usury. He asks the usurer to face his coming judge:⁵⁷

What will you answer when accused by the judge who cannot be bribed, when he says to you, "You had the law, the prophets, the precepts of the gospel. You heard them all together crying out with one voice for charity and humanity: 'You shall not be a usurer to your brother' (Dt. 23:20), or in another place, 'He did not lend at usury' (Ps. 14:5), or again, 'If you lend to your brother, you shall not oppress him' (Ex. 22:25)"?

⁵³ Contra Usurarios (PG, 46:446), (transl. mine).

⁵⁴ Hom. iv in Eccl. (PG, 44:673).

⁵⁵ Contra Usurarios (PG, 46:446), (transl. mine).

⁵⁶ Homilia iv in Eccl. (PG, 44:672-73).

⁵⁷ Contra Usurarios (PG, 46:447), (transl. mine).

In a letter to Letoius, bishop of Melitene, Gregory states his position tersely and clearly. He declares straightforwardly that sacred scripture forbids the taking of any surplus over and above capital, no matter what pretense at legality is made. As pointed out in the last ~~chapter~~, interest-taking was legal all through the patristic period. But Gregory, like Ambrose, Chrysostom and Augustine (as will be seen shortly), condemned it nonetheless. Like other Fathers, Gregory saw the Old Testament prohibition as clearly still binding. The Law had not been destroyed, but fulfilled. No matter what the laws of the empire might say, the law of God still forbade usury.

Gregory Nazianzen (330-389), who had taken Basil as his guide for living and his teacher of dogma, denounces usury, like his master, in words reminiscent of Aristotle. He takes up the topic in the sixteenth of his forty-five extant orations.

59

Another man defiles the earth with usury and interest, gathering where he did not sow and harvesting where he did not plant---reaping his gain not from the earth, but from the need of the poor!

Gregory's argument rests on the natural sterility of money. Money cannot produce offspring (tokos, interest) if it is barren, as Aristotle pointed out in Politica, I, 10; yet the usurer persists in reaping

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Ep. ad Letonium (PG, 45:234).

59

Oratio xvi, 18 (PG, 35:957), (transl., mine).

gain from it. Such gain can only spring from the need of the poor.

In his Die Wirtschaftsethischen Lehren der Kirchenväter, Ignaz Seipel noted the similarity between Gregory's and Aristotle's arguments,⁶⁰ but he failed to notice the same strain of argumentation in Basil, Ambrose and Gregory of Nyssa.

Of all the Fathers St. Ambrose (339-397) gives the most detailed treatment of usury. He dedicates the entire De Tobia⁶¹ to the subject. As in other works Ambrose here depends heavily on Philo, Origen and especially Basil, with whom he was corresponding at this time (c. 377) and whom he had adopted as his teacher in this early period.⁶²

The first half of the De Tobia makes heavy use of Basil's Homilia ii in Ps. xiv. Ambrose often takes the introductory sentence of a discussion almost verbatim from this work and then summarizes Basil's arguments, transposing their order and adding to them freely.⁶³ The second half of the book differs considerably, with less dependence on Basil and greater use of Philo and Origen. Sections 59-61 are clearly dependent on Origen's third homily on Ps. 36, already mentioned

⁶⁰ Ignaz Seipel, Die Wirtschaftsethischen Lehren der Kirchenväter (Vienna: Von Mayer, 1907), p. 167, n. 109.

⁶¹ Ambrose, De Tobia (PL, 14:759-94).

⁶² Cf. De Officiis, I, 1 (PL, 16:25).

⁶³ L.M. Zucker, S. Ambrosii De Tobia (Washington: Catholic University of America, 1933), p. 10. The translations of passages from De Tobia are taken from this work.

above.⁶⁴ Sections 7, 8, 47, 61f., 76 and 87 show dependence on Philo's De Virtutibus and De Somniis.⁶⁵

Though Ambrose's treatment is far from original, it is quite comprehensive. He considers all the scriptural evidence against usury and condemns the practice as contrary to divine positive law; in his De Officiis⁶⁶ he also condemns it as against nature. Different from most of the Fathers, Ambrose attempts to grapple with the difficulties that scripture raises, especially the problem of lending to the foreigner.⁶⁷ Like other Fathers, he castigates the lender for oppressing the poor and gives poetic descriptions of the plight of the borrower.⁶⁸ He condemns the legal centesima⁶⁹ as well as illegal anatocism.⁷⁰ He disapproves of all kinds of interest, whether of money, produce, or anything else.⁷¹ Finally, he exhorts to a generosity that goes beyond the law.⁷²

⁶⁴ Cf. De Tobia, 59-61 (PL, 14:782-83), with Origen's third homily on Ps. 36 (PG, 12:1347-48).

⁶⁵ Cf. De Tobia, 7 and 8 (PL, 14:762), (henceforth DT) with De Virtutibus, XIV, 82f.; DT, 47 (PL, 14:777) with De Somniis, I, 92; DT 61-87 (PL, 14:783-791) with De Somniis, I, 92f. and 102f.; DT, 76 (PL, 14:788) with De Somniis, II, 235.

⁶⁶ De Officiis, III, 3 (PL, 16:151).

⁶⁷ DT, 51 (PL, 14:779).

⁶⁸ Cf. DT, 16, 17, 28 (PL, 14:765, 769).

⁶⁹ DT, 34, 40, 42, 50 (PL, 14:771, 774, 775, 778-79).

⁷⁰ DT, 42, 45 (PL, 14:775-77).

⁷¹ DT, 49 (PL, 14:778).

⁷² DT, 9, 10 (PL, 14:762-63).

Though Ambrose's scriptural argumentation seems haphazard at first, it does cover the principal passages on usury, even if in a somewhat leisurely way. Over the course of the work he considers each of the main texts: Ex. 22:24,⁷³ Dt. 23:20,⁷⁴ and Lev. 25:35.⁷⁵ In addition he cites the most important secondary texts: Ps. 15:5,⁷⁶ Ez. 18:8,⁷⁷ and Neh. 5:11.⁷⁸ He also uses Lk. 6:35,⁷⁹ which is, as already pointed out, a common corroborative (though not decisive) patristic citation in this context.

It is clear from the De Tobia and from Ambrose's Epistula xix ad Vigilium⁸⁰ that basically Ambrose views usury as oppression⁸¹ of the poor. He describes the ravages of interest very picturesquely:

⁷³
DT, 46 (PL, 14:777).

⁷⁴
DT, 48 (PL, 14:778).

⁷⁵
DT, 52 (PL, 14:779).

⁷⁶
Ibid.

⁷⁷
Ibid.

⁷⁸
DT, 70 (PL, 14:786).

⁷⁹
DT, 54 (PL, 14:780-81).

⁸⁰
Ep. xix ad Vigilium (PL, 16:983-84).

⁸¹
DT, 16, 17 (PL, 14:763).

...always the wave of interest is in motion. It overwhelms the shipwrecked, casts out the naked, despoils the clothed, abandons the unburied. For you seek money (nummum) and you incur shipwreck (naufragium). On this side Charybdis roars around you, on that the Sirens, who as the fables tell, by the charm of their appearance and by the delight of their sweet singing, used to deprive of the hope and desire of seeking their homes those drawn into the hidden shoals. Straightway the sellers of perfume and of various precious wares rush up like dogs, as it were, drawn by the keen scent of wandering prey... And truly their whole fortune (sors) is made, but you remain bereft (exors) of your possessions.

He rebukes usurers for their pitilessness, taking special aim at affluent men who seek to grow richer from the poverty of others.⁸²

Even the poor man is fruitful to you unto gain... You are merciful men, certainly, who enslave to yourselves him whom you free from another! He pays usury who lacks food. Is there anything more terrible? He asks for medicine, you offer him poison; he begs for bread, you offer him a sword; he begs for liberty, you impose slavery; he prays for freedom, you tighten the knot of the hideous snare.

All this was not mere rhetoric. In passages borrowed wholesale from Basil,⁸³ Ambrose tells of debtors who had hung themselves in despair or who had been forced to sell their children into slavery to satisfy their creditors.⁸⁴

⁸²
DT, II (PL, 14:763).

⁸³
Cf., e.g., Basil, Homilia ii, 4 (PG, 29:277) with the passage quoted above from DT, 28, 29 (PL, 14:769).

⁸⁴
DT, 28, 29 (PL, 14:769).

You enter into account the money returned, you do not compute the nooses sought, which many, too self-respecting to face disgrace, too weak to face injustice, in seeking their own destruction have preferred to the shame of so odious an indictment, fearing dishonor in life more than the torment of death. I have seen a pitiful sight, children led forth to sale for their father's debt and held as the heirs of his misfortune who would not be sharers in his possessions, and the creditor not blushing at so enormous an outrage...

Ambrose depicts how greedy usurers held even corpses as a pledge and denied them burial until the interest had been paid by the heirs.⁸⁵ He also warns of how creditors abuse those who act as surety for loans.⁸⁶

The legal rate of interest comes up several times in the course of the book.⁸⁷ Ambrose mentions it only to condemn taking it.⁸⁸

How different is the wickedness of the prince of this world! The usurer of money has a mortgage on one's head, he holds one's signature, he reckons his capital, he exacts his hundredth (centesimam)... The Lord freed the hundredth sheep---that was the hundredth of salvation, this, of death---and the good earth returns fruit a hundred-fold... Ought they not by that very word by which they designate it hundredth, to recall to memory the Redeemer, who came to save the hundredth sheep, not to destroy it?

⁸⁵
DT, 36 (PL, 14:771-72).

⁸⁶
DT, 89 (PL, 14:792).

⁸⁷
DT, 34, 40, 42, 50 (PL, 14:771, 774, 775, 778-79).

⁸⁸
DT, 35 (PL, 14:771).

Anatocism was obviously common practice in Milan,
as elsewhere. ⁸⁹ Ambrose censures it several times. ⁹⁰

The first of the month arrives, the capital brings forth its hundredth; each month comes, interest is born, evil offspring of evil parents. This is the generation of vipers. The hundredth has developed; it is demanded, it is not paid; it is applied to the principal. . . And therefore it begins to be no longer interest, but principal that is to say, not a hundredth of interest, but interest on a hundredth.

Commenting on Deuteronomy, Ambrose condemns any type of interest-taking, whether of money, or food, or clothing, or anything else. ⁹¹ He also takes up the problem of the nokri and gives it a fuller treatment than any other Father. ⁹²

Ambrose admits that Deuteronomy clearly allowed interest-taking in the case of the foreigner. Though he holds that the gospel goes farther than the Old Testament in the matter of lending, ⁹³ he does not conclude here that the New Testament abolishes the permission to take interest. Rather, he gives a reason why it is lawful to take interest in certain cases. He begins with the assertion that the foreigner mentioned in Deuteronomy is an enemy. The Israelite had a right to bear

⁸⁹ DT, 42, 45 (PL, 14:775-77).

⁹⁰ DT, 42 (PL, 14:775).

⁹¹ DT, 49 (PL, 14:778).

⁹² DT, 51 (PL, 14:779).

⁹³ Cf. DT, 54, 85 (PL, 14:780-81 and 791).

weapons against such a man and to inflict harm on him. But if an enemy cannot be easily defeated in war, then his opponent certainly has a right to inflict harm on him by other means, as, for example, taking interest. If it would not be a crime to kill an enemy, it would certainly not be one to exact usury from him. Ergo, ubi ius belli, ibi etiam ius usurae.⁹⁴

Ambrose taught that, though a man might take interest from an enemy, nevertheless Deuteronomy clearly forbade his taking it from brethren. Through a broad definition of the word brethren, he restricted the number of cases where usury would be allowed. He defined brethren as those who, first, have the faith, or, second, are at least under Roman Law.⁹⁵ Obviously the two categories included almost everyone with whom Ambrose's readers had ordinary contact. But while the definition is broad, it should be noted that it did not exclude all practical cases in which a Christian might take interest, since during and after Ambrose's time dealings with the barbarians became increasingly more common.

Ambrose's approach to the question of the nokri is unique among the Fathers. He admits that the permission to take interest from enemies is applicable even in the Christian era. He clearly allows interest-taking in cases where warfare is justifiable. To his credit Ambrose

⁹⁴
DT, 51 (PL, 14:779).

⁹⁵
Ibid.

does attempt to grapple with the difficulty that the text from Deuteronomy poses, even if his answer may not be too convincing.

Ambrose, like other Fathers, considered interest-taking serious sin. He was deeply aware of the presence of Christ in the poor man.⁹⁶ To exact usury from the poor man was to rob him,⁹⁷ even to kill him.⁹⁸ In his De Bono Mortis, Ambrose classifies usury among the sins that lead to death:⁹⁹

If anyone takes usury, he commits robbery and no longer has life.

To those who complained that usury had been practice for years, Ambrose retorted, "So has sin!"¹⁰⁰

Through Basil, Ambrose inherits the Aristotelian strain of argumentation,¹⁰¹ already noted in discussing Basil, Gregory of Nyssa and Gregory Nazianzen. He plays on the word tokos¹⁰² as Aristotle does in Politica I, 10. He also compares the rapid generation of usury to the birth of hares, a clear reference to Aristotle's Historia Animalium.¹⁰³

⁹⁶
DT, 55 (PL, 14:781).

⁹⁷
De Nabuthe, 4, 15 (PL, 14:735).

⁹⁸
DT, 46 (PL, 14:777).

⁹⁹
De Bono Mortis, 12, 56 (PL, 14:566), (transl. mine).

¹⁰⁰
DT, 88 (PL, 14:792).

¹⁰¹
Cf. Basil, Homilia ii, 3 (PG, 29:273).

¹⁰²
DT, 42 (PL, 14:775).

¹⁰³
Aristotle, Historia Animalium, 6.33.579f.

The latter reference makes it certain that Aristotle has influenced both Basil and Ambrose in this context, but it is impossible to say how well acquainted either was with his or Plato's specific teaching on usury. There are ideological similarities between the patristic texts and both the Politica and the Leges, but there are no certain explicit or implicit citations.

Realistically, Ambrose knew that the usury prohibition discouraged lending. He felt that this was all the better in the case of the poor man, if loans meant loans at interest.¹⁰⁴ He remonstrated with the poor man:¹⁰⁵

You are poor: consider the difficulty of paying. Wealth is diminished by interest, poverty is not lightened by interest; for never is evil corrected by evil nor is a wound healed by a wound, but is made worse by an ulcer.

On the other hand he exhorted the rich to generosity:¹⁰⁶

Many through fear of loss do not lend, since they fear fraud, and this is what they are accustomed to say to those who ask of them. To every one of these it is said: "Lose thy money for thy brother's sake and for thy friend, and hide it not beneath a stone to be lost. Place thy treasure in the precepts of the most high and it shall avail thee more than gold." But the ears of men have been deaf to such salutary precepts, and especially the rich have their ears closed by that brazen din of their money. While they are counting their money they do not hear the words of Scripture. ... But when mention has been made of usury or of a security, then, with arrogance thrown aside, the money-lender smiles...

¹⁰⁴ DT, 80-82 (PL, 14:789-790).

¹⁰⁵ DT, 82 (PL, 14:790).

¹⁰⁶ DT, 9-10 (PL, 14:762-63).

Just a few years after Ambrose's main works on the subject, St. John Chrysostom (344? -407) took up the attack on usury in his homilies on Genesis and St. Matthew's gospel, given at Antioch around 388 and 390 respectively. Chrysostom uses a very varied philosophical and theological approach. He attempts to show that usury is harmful to those who lend and to those who borrow,¹⁰⁷ that it is openly opposed to sacred scripture and that it thus endangers eternal salvation.¹⁰⁸ Like Gregory of Nyssa and Ambrose, Chrysostom also faces the problem of the attitude of the civil law toward usury.¹⁰⁹

In his forty-first homily on Genesis he asks why usury is forbidden.¹¹⁰ It is prohibited, he answers, because it inflicts great damage on both parties. The debtor is afflicted with want, and the creditor, though increasing his riches, heaps up a multitude of sins. To corroborate his argument, Chrysostom cites the prohibition of usury in Dt. 23:20-21. He uses the text secondarily, however, since his main argument is that usury is forbidden because it is injurious to the

¹⁰⁷

John Chrysostom, Homilia lvi in Mt. (PG, 58: 558).

¹⁰⁸

Homilia xli in Gen. (PG, 53: 376-77); cf. also, Homilia lvi in Mt. (PG, 58: 557-58).

¹⁰⁹

Hom. lvi in Mt. (PG, 58: 558).

¹¹⁰

Hom. xli in Gen. (PG, 53: 376-77).

poor and hence involves sin on the part of the rich. The scriptural prohibition flows from the evils inherent in the practice.

Chrysostom's argument is very important. He attempts to deal with the immanent values that the usury prohibition seeks to safeguard. The question will necessarily arise: what if these values are not at stake in a transaction? As shall be seen, this question is already present in the writings of St. Jerome. It will receive a satisfactory solution only in the later middle ages.

In his fifty-sixth homily on St. Matthew's gospel,¹¹¹ Chrysostom takes up what must have been a touchy question at Antioch. He states that he knows that many would prefer him to be silent but that¹¹² he must speak nonetheless. It is evident from his sixty-first homily¹¹³ that there were those in Antioch who could "think up new types of usury which not even the laws of the gentiles would permit," who charged exorbitant rates and oppressed those who needed help for supporting their wives and families.

Those who are forbidden to accumulate money even from just labor and, even more, are commanded to open their hands to the poor---these are growing rich from the poverty of others.¹¹⁴

¹¹¹ Hom. lvi in Mt. (PG, 58:555f.).

¹¹² Hom. lvi in Mt. (PG, 58:556).

¹¹³ Homilia lxi in Mt. (PG, 58:591-92), (transl. mine).

¹¹⁴ Hom. lvi in Mt. (PG, 58:556), (transl. mine).

Chrysostom was well aware of the permissive imperial attitude toward interest-taking. He fields the objection that the civil law allowed usury,¹¹⁵ retorting that even a publican may keep the external law but still be worthy of punishment. So too the creditor will be punished unless he stops oppressing the poor and profiting from their poverty. Money is for alleviating poverty, not for aggravating it. The creditor should not labor for the centesima (the legal profit on a loan), but for eternal life.

In another argument Chrysostom uses the civil law to bolster his stand. As noted in the last chapter, a series of enactments sought to limit interest-taking by viri illustres. Taking this fact into account,¹¹⁶ Chrysostom notes that even the exterior law regards usury as extreme impudence and so forbids it to certain dignitaries, especially to senators.¹¹⁷ If Roman legislators so honor their senators, how much more should Christians honor their fellow-citizens in the heavenly city.

Chrysostom takes up the obvious objection that debtors are grateful to get a loan and that some are quite willing to pay interest.¹¹⁸ He counters that this happens only because of the inhumanity of creditors.

¹¹⁵

Ibid.

¹¹⁶

Hom. lvi in Mt. (PG, 58:557-58).

¹¹⁷

Cf. Cod. Theod., II, 33, 3.

¹¹⁸

Hom. lvi in Mt. (PG, 58:557).

If they offered loans free of interest, debtors would not be reduced to feigning gratitude. To those who will not lend unless they receive recompense, Chrysostom recalls Dt. 15. Later he adds Lk. 6:35 to clinch the argument.¹¹⁹

In his thirteenth homily on the first epistle to the Corinthians,¹²⁰ also written at Antioch, Chrysostom uses a psychological argument aimed at the usurer's sense of honor. Money is not sinful, he begins, but it is sinful not to distribute money to the poor. God made nothing evil, so money is good as long as it does not dominate its possessors and is used to alleviate poverty. The man who is rich must not seek to receive from others, but must rather give to them.

...what is considered more disgraceful, to beg of the rich or of the poor? Everyone sees the answer at once, I suppose---of the poor. Now this, if you notice, is what the rich do; for they do not dare to apply to those who are richer than themselves. Those who beg, on the other hand, do so of the wealthy, for one beggar asks not alms of another, but of a rich man. Yet the rich man tears the poor in pieces. Again tell me, which is the more dignified, to receive from those who are willing and are obliged to you, or when men are unwilling, to disturb and compel them? Clearly not to trouble those who are unwilling. But this also the rich do.¹²¹

¹¹⁹

Hom. lvi in Mt. (PG, 58:558).

¹²⁰

Hom. xiii in I Cor. (PG, 61:113-14).

¹²¹

Ibid., (transl. mine).

Chrysostom returns to the subject in one of his homilies given at Constantinople.¹²² Here he describes the usurer as worse than a thief or house-breaker. Unlike the usurer, the thief at least goes about his work in fear and trembling, as one who is ashamed to sin. But the usurer, more like a tyrant, stands in the marketplace in broad daylight, haggling for greater gains. He climbs no walls, he puts out no lights, but before everyone he embarrasses the debtor, forces him to lay bare whatever he has and violently seeks to take away his goods.

St. Jerome (344-420) treats usury mainly in his exegetical works, especially in his commentary on Ez. 18:6.¹²³

Jerome notes that the Hebrew text of Ezekiel forbids all sorts of interest-taking, not just the taking of money, as the Septuagint might indicate. He insists on this point against the practice of the time. The taking of anything is forbidden, whether it be money or grain or wine or oil. One may not give 10 bushels at seeding time and expect 15 back at harvest.¹²⁴ One may not even take a gift from a debtor.¹²⁵

¹²² Hom. x in I Thes. (PG, 62:460f.).

¹²³ Jerome, In Ez. Commentarii, 6, 18 (PL, 25:176-77).

¹²⁴ Cf. chapter III, n. 91.

¹²⁵ Cf. Sifre on Deuteronomy, XXIII, 21, 263.

Jerome backs his argument with an impressive array of scriptural citations: Ps. 15:5, Dt. 15:6 and 23:20, and Lk. 6:35. He compares the laws prohibiting usury and sees a progression in them. The legal sections of the Old Testament (Lev. 25:35 and Dt. 23:20-21) forbade interest only among the brethren, but in the prophets (Ez. 18:8) all interest-taking is prohibited. In the New Testament another step is taken when Our Lord says, "Lend to those from whom you can expect nothing in return" (Lk. 6:34). As pointed out in the second chapter, Jerome's interpretation of Ezekiel, Leviticus and Deuteronomy in this context is inaccurate.

Jerome takes up the case of lending to a person who profits from the loan. Money-lenders maintained that it was just to take interest on loans if borrowers made tremendous profits from the use of money which was lent to them. This is basically the question posed by Chrysostom's writings: what if the values the prohibition seeks to safeguard are not at stake in a given transaction? Jerome answers, rather unconvincingly, that interest-taking is still illicit.¹²⁶

Let the merciful usurer tell us briefly whether he gave to someone who had possessions or to one who did not. If to someone who had possessions, he should not have given to him at all, but he gave as if to someone who did not have anything. Therefore why does he demand more back as if from someone who had something?

¹²⁶

In Ez. *Commentarii*, 6, 18 (PL, 25:176-77), (transl. mine).

Jerome's answer is hardly satisfying. It works from the presupposition that the scriptural prohibition is an absolute, meant to cover all cases. It fails to take into account the purpose of the law, as Chrysostom attempted to do in his homily on Genesis. As a result Jerome does not grapple with the actual difficulty involved in the objection. He simply dismisses it, with an unconvincing retort, as opposed to God's command.

St. Augustine (350-430) treats the usury question in several places.

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In his Ennarationes in Ps. xxxvi, Augustine affirms that usury is forbidden for all. His argument rests on the identification of Christ with the poor man. He notes, like most other Fathers, that the usurer wishes less to give than to receive. But he is taking usury from Christ, who said, "As long as you did it to one of these, the least of my brethren, you did it to me" (Mt. 25:40). The usurer will therefore be received into the everlasting fire which is prepared for the devil and his angels.

Usury is especially forbidden to clerics, Augustine writes in his Ennarationes in Ps. cxxviii.¹²⁸ Laymen had cited the bad example of

¹²⁷ Augustine, Ennarationes in Ps. xxxvi, sermo 3, 6 (PL, 36:386).

¹²⁸ Ennarationes in Ps. cxxviii (PL, 37:1692).

clerics as an excuse for taking interest. Augustine does not deny the abuse, which, as shall be seen in the next chapter, was not uncommon. But he reaffirms his strong stand against all usury. Quoting Ps. 15:5, he emphasizes that the words are God's. If the cleric preaches them and fulfills them, while the layman does not, then the former will go to heaven and the latter to hell. But if the cleric does not do what he preaches, then he likewise will be condemned. Answering another objection, Augustine demands that the professional money-lender look for a new job. The usurer may claim that interest-taking is his only livelihood, but the robber, the magician and the pimp could say the same, and their occupations are clearly illicit.

In a letter to Macedonius,¹²⁹ written in 414, Augustine complains of the civil law and of judges who order that interest be paid. He compares the usurer to a thief and states that he would like to demand that usury be given back in restitution, but he acknowledges that there were no judges to whom a debtor could have such recourse.

In his Sermo xxxviii¹³⁰ and in Sermo lxxxvi¹³¹ Augustine again stressed the christological motive for avoiding interest-taking. He repeats that it is Christ to whom the usurer lends. It is Christ who is in need when the poor man is in need. It is Christ who is waiting to receive and to give eternal life in return.

¹²⁹ Ep. cliv (cliii), 25 (PL, 33:665).

¹³⁰ Sermo xxxviii (PL, 38:239-40).

¹³¹ Sermo lxxxvi, 5 (PL, 38:525-26).

Finally, in De Baptismo contra Donatistas,¹³² he emphasizes that interest-taking excludes a person from the kingdom of heaven.

To show the gravity of the crime of oppressing the poor through usury, he cites Ps. 15:5, 1 Cor. 6:10 and Cyprian's De Lapsis, VI.¹³³

To close this treatment of the early Fathers, the writings of Leo the Great (390? -461) must be briefly examined. Leo adds nothing new to the patristic teaching on usury, but he gives the weight of his authority (which was considerable) to it. His letter Nec hoc quoque¹³⁴ is the clearest general prohibition enunciated by supreme ecclesiastical authority before 1179.¹³⁵ It forms the cornerstone of later usury legislation, passing into the Hadriana, a collection of canons which was to be the most influential body of ecclesiastical legislation for Charlemagne's empire,¹³⁶ and also into Charlemagne's capitularies, the secular legislation of state.¹³⁷ As will be evident from reading the text, the letter merely sums up what was the long-standing patristic teaching on usury.

¹³² De Baptismo contra Donatistas, 4, 9 (PL, 43:162).

¹³³ Cf. Cyprian, De Lapsis, VI (PL, 4:470-71).

¹³⁴ Nec hoc quoque (PL, 54:613) is actually part of Ep. iv to the bishops of Campania, Picenum, Etruria and other provinces.

¹³⁵ Cf. Noonan, p. 15. In 1179 the Third Lateran Council (canon 25) declared that usury was condemned by both Testaments. It also excommunicated and denied Christian burial to manifest usurers. Cf. J. Hefele and H. Leclercq, Histoire des Conciles (Paris: Letouzey et Ané, 1908), V², p. 1105; henceforth, HL.

¹³⁶ Cf. F. Maassen, Geschichte der Quellen und der Literatur des canonischen Rechts im Abendlande (Graz: von Leuschner & Lubensky, 1870), I, p. 441-71; cf. also, PL, 84:762.

¹³⁷ Cf. chapter V, note 64.

It will be seen in the next chapter that local councils had issued similar legislation over the century and a half which preceded Nec hoc quoque.¹³⁸ The text is brief enough to quote in full.

This point, too, we have thought must not be passed over, that certain men, possessed with the love of base gain, lay out their money at interest and wish to enrich themselves as usurers. For we are grieved that this is practiced not only by those who belong to the clergy, but also by laymen who desire to be called Christians. And we decree that those who have been convicted be punished sharply, that all occasion of sinning be removed. The following warning, also, we have thought fit to give, that no cleric should attempt to make money in another's name any more than in his own: for it is unbecoming to shield one's crime under another man's gains. No, we ought to look at and aim at only that usury whereby what we bestow in mercy here we may recover from the Lord, who will restore a thousand-fold what will last forever. This admonition of ours, therefore, proclaims that if any of our brethren endeavor to contravene these rules and dare to do what is forbidden by them, he may know that he is liable to deposition from his office, and that he will not be a sharer in our communion who refuses to be a sharer of our discipline.

The letter needs little comment. It is a clear general prohibition of usury under threat of deposition and excommunication. Leo's Sermo xvii¹³⁹ gives some background material. Leo emphasizes that Christ came to fulfill the Law, not to destroy it; those things which are in harmony with both testaments, therefore, remain unchanged. Among these is the prohibition of interest-taking. Leo quotes Ps. 15:5 to show

¹³⁸ Nec hoc quoque (PL, 54:613), (transl. by C.L. Feltoe, as found in The Nicene and Post-Nicene Fathers, ed. by P. Schaff and H. Wace [N.Y.: The Christian Literature Co., 1895], v. XII, p. 3-4).

¹³⁹ Sermo xvii ("De Jejuniis Decimi Mensis," vi), (PL, 54:180-82).

the gravity of the sin of usury, which excludes the sinner from the Lord's tabernacle. Usury, no matter what its results might be, is sinful. Leo sums up his strong stand in the famous epigram:¹⁴⁰

Fenus pecuniae funus est animae.

Before drawing some conclusions on the patristic teaching on usury, a few observations should be made concerning a work to which this chapter is greatly indebted.

Ignaz Seipel, the famous patrologist and former chancellor of Austria, wrote in 1907 what is still today the best account of the patristic teaching on usury. In his very informative book, Die Wirtschaftsethischen Lehren der Kirchenväter,¹⁴¹ Seipel outlined and documented the attitudes of the Fathers toward interest-taking, but unfortunately (probably because of the huge scope of his work) he failed to tap all the sources; as a result, he reached conclusions with which this chapter has necessarily disagreed.

From his examination of the sources Seipel emphasized that the Fathers saw the problem in terms of charity and that the prohibition of usury flowed from their meditation on the economic conditions of the time in the light of Jesus' commandment of love.¹⁴² This conclusion is

¹⁴⁰ Sermo xvii (PL, 54:181).

¹⁴¹ Seipel, p. 162-182.

¹⁴² Seipel, p. 181.

certainly true. But to bolster it, Seipel minimized the role that the Old Testament prohibition played in forming the Fathers' attitude. He concluded that the Fathers were not stressing the Old Testament prescriptions, but were merely using them to support their own conviction of the immorality of usury.¹⁴³ To corroborate this second conclusion Seipel stated that at first the Fathers referred to sacred scripture only in general for their condemnation of usury, while later they strengthened their teaching with explicit citations from the Old Testament.¹⁴⁴ The facts belie this conclusion. Even the earliest Fathers to write on the subject turn directly to the Old Testament texts. Clement of Alexandria cites the prohibition from Lev. 25:35, Dt. 23:20-21, and Ez. 18:8.¹⁴⁵ Tertullian cites Ez. 18:8.¹⁴⁶ Cyprian uses Ps. 15:5, Ez. 18:8, and Dt. 23:20-21.¹⁴⁷

Seipel also concluded that the patristic prohibition at first included only certain persons called to special holiness and then later everyone.¹⁴⁸ But his documentation for this conclusion is extremely weak.

¹⁴³

Seipel, p. 179.

¹⁴⁴

Seipel, p. 178.

¹⁴⁵

Cf. Paedagogus, 1, 10 (PG, 8, 364) and Stromateis, II, 18 (PG, 8, 1024).

¹⁴⁶

Cf. Lib. iv adv. Marcionem (PL, 2:398-99).

¹⁴⁷

Cf. Testimoniorum Libri iii: ad Quirinum, lib.iii, 48 (PL, 4:759).

¹⁴⁸

Seipel, p. 178.

He cites only Apollonius as proof that in an early period the prohibition of usury was restricted to "prophets." But Apollonius' stand on the subject is known only through the writings of Jerome¹⁴⁹ and Eusebius,¹⁵⁰ and neither account supports Seipel's conclusion.

Apollonius, as was seen above, does argue that the Montanists' claim to be prophets is belied by their taking of usury. But this is not to restrict the prohibition to prophets; on the contrary, the basis for Apollonius' argument is that the Montanists' conduct openly contradicts sacred scripture, which forbids usury quite generally.

In spite of these very important differences and other minor ones, a number of the conclusions reached in this chapter coincide with those that Seipel reached. Most notably, Seipel saw clearly that the prohibition of usury was intimately tied to the Christian consciousness of the charity that should prevail among the brethren.¹⁵¹ He also noted how closely treatment of the question was linked with discussion of oppression of the poor, even if the prohibition was not limited to dealings with poor people.¹⁵² While fuller patristic evidence has demanded revision of Seipel's conclusions on the importance of the Old Testament prohibition for the

¹⁴⁹

De Viris Illustribus, 40 (PL, 23:655).

¹⁵⁰

Historia Ecclesiastica, 5, 18 (PG, 20:48).

¹⁵¹

Seipel, p. 181.

¹⁵²

Ibid.

early Christian teaching and on the initial restriction of the prohibition to those who were prophets, nevertheless his brief work provides much factual information which is still quite useful even though it must be supplemented.

The results of this analysis of the patristic teaching may now be summarized.

1. The Fathers saw the Old Testament prohibition as still binding. They cite the prohibition texts continually, especially Ps. 15:5, Ez. 18:8, Dt. 23:19-20 and Lev. 25:35. Tertullian, Jerome, Basil, Ambrose and Chrysostom also cite Lk. 6:34-35, but in relationship to the Old Testament (as "fulfilling the law rather than destroying it"). It is erroneous to claim, as L. Levasseur does,¹⁵³ that the prohibition of usury was based on an inexact literal translation of this text in the Vulgate, which reads, "Mutuum date, nil inde sperantes." Neither this translation nor the Greek text, as pointed out above, refers to usury. The saying of Jesus is rather a call to selfless love. The text did become very important, but at a much later date when Urban III in his decretal Consuluit¹⁵⁴ cited it as prohibiting usury. This interpretation remained virtually

¹⁵³
L. Levasseur, "Prêt à intérêt," La Grande Encyclopédie, 27, 608-614.

¹⁵⁴
Gregory IX, Decretales V:19:10, Consuluit, in Corpus Juris Canonici; cf. also, Noonan, p. 20.

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unquestioned until Dominic Soto in the sixteenth century. But in the early patristic period, when the Christian teaching on usury was already quite clear, Lk. 6:34-35 played a rather minor role.

2. The Fathers continually treated usury in the context of oppression of the poor, though they applied the prohibition quite generally even to cases where the poor were not involved.

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3. Usury was forbidden to all, not just to prophets or clerics. There is no evidence that the prohibition came to be applied to everyone only gradually.

4. Arguments from the nature of money are clearly present in Gregory of Nyssa, Basil, Ambrose, and Gregory Nazianzen. These are at least reminiscent of Aristotle and perhaps directly dependent on him. They foreshadow the classical medieval argument against usury.

5. Extra-biblical Jewish thinking on usury, mediated through Philo, clearly influences at least Clement of Alexandria, Basil and Ambrose.

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Dominic Soto, De Justitia, VI, 1, 1.

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This point will be examined more thoroughly in light of the conciliar statements presented in the next chapter.

6. The Fathers regard usury as gravely sinful, frequently quoting Ps. 15:5 to remind their hearers that the usurer will be excluded from the eternal tabernacle.

7. They deal explicitly with the fact that usury was legal, but condemn it nonetheless.

8. Two practical questions which are critical for the development of thought on usury do arise in patristic times, but neither receives a satisfactory answer. Ambrose raises the first by asking how Deuteronomy could have allowed the taking of interest from foreigners. He responds by identifying foreigners with enemies and applying the axiom: Ubi ius belli, ibi etiam ius usurae. But pursuing the difficulty further, it might be asked whether the nokri were all really enemies of the Jews or whether many of them were simply merchants who traded with Israelites. In the latter case one is still faced with the question of why it was permitted to take interest from them. Jerome raises the second question in writing about the morality of taking interest from a person who profits from the loan. Unfortunately Jerome merely reiterates the prohibition without going to the heart of the matter at all. Both of these questions at root ask about the immanent values which the usury prohibition seeks to protect (a question posed explicitly by Chrysostom) and inquire about situations where those values might not be at stake. In other contexts the Fathers often emphasized that the prohibition seeks to guard Christian love among the brethren, especially

love toward the poor. But in answering these two questions, Ambrose and Jerome limited themselves to exegeting the transcendent precept as it appeared in Deuteronomy and Ezekiel respectively. In so doing they bypassed the question of immanent values and as a result failed to grapple with the problem: what if those values are not at stake in given instances? This problem, like all unanswered ones, will arise again in the course of later history to demand a satisfactory response.

CHAPTER V

EARLIER CONCILIAR LEGISLATION

Usury was a recurrent problem for the early Church. While the Fathers were carrying on their battle against it, a remarkable string of authoritative pronouncements poured out from local and provincial councils, and even from the general council of Nicaea, condemning the practice. In both east and west ecclesiastical legislation prohibited what civil legislation allowed. Severe penalties were threatened against violators of the law. Yet even so, lending at interest went on. Both clerics and laymen ignored prohibitions and sought profit from their loans. The broad extent of the problem can be seen from the large number of authoritative condemnatory interventions on the subject.

These earliest ecclesiastical pronouncements on usury must now be examined.

The Council of Elvira (306), the oldest council from which disciplinary canons remain, was the first of a series of meetings bringing bishops together from all over Spain. It approved eighty-one canons which are notable not only for their age but for their severity. The council was held just after a period of persecution and aimed to restore order where laxity had set in. Many local synods preceded it and undoubtedly

provided much of the material contained in the canons.¹

The twentieth canon takes up the problem of usury:²

Si quis clericorum detectus fuerit usuras accipere, placuit degradari et abstinere. Si quis etiam laicus accepisse probatur usuras et promiserit correptus se jam cessaturum, nec ulterius exacturum, placet ei veniam tribui; si vero in ea iniquitate duraverit, ab ecclesia sciat se esse projiciendum.

The canon is very important in the history of the usury question. It is a formal prohibition of usury among both clerics and laymen. Coming as it does at the beginning of the fourth century, it antedates Leo's Nec hoc quoque by a century and a half. While I.³ Seipel, F.L. Cross,⁴ and H.J. Schroeder⁵ have asserted that the usury prohibition at first covered clerics alone and only later came to be extended to laymen, the evidence does not support this contention. Patristic writings, as indicated in the last chapter, witness to a general prohibition. From Elvira it is evident that the earliest extant disciplinary canon on the subject also outlaws interest-taking for both clerics

¹ G. Bareille, "Elvire (concile d')", DTC, IV, 2378-2397; esp., 2395.

² Mansi, Sacrorum Conciliorum Nova et Amplissima Collectio (Florence, 1759 -), II, 200. For the authenticity of this canon, cf. also, HL, I, p. 232-33; Bareille, DTC, IV, 2395; Bernard, DTC, XV, 2331.

³ Seipel, p. 178.

⁴ F. L. Cross, "Usury," in Oxford Dictionary of the Christian Church (London: Oxford University Press, 1957), 1401.

⁵ H. J. Schroeder, Disciplinary Decrees of the General Councils (St. Louis: B. Herder, 1937), p. 48.

and laymen. A canon from an early council at Carthage⁶ (348) likewise includes both under the prohibition. While the councils of Arles⁷ and Nicaea,⁸ as shall be seen, treat usury only in reference to clerics, it by no means follows from this that laymen were permitted to take interest at the beginning of the fourth century. Both councils take up the question in order to impose penalties on delinquent clerics, who, as Cyprian had pointed out long before,⁹ were especially notorious as usurers. Usury was forbidden a fortiori to clerics because of their position, but as the Fathers (from both the East and West), the Council of Elvira, the Council of Carthage and, in the next century, Nec hoc quoque point out, it was forbidden to everyone else as well.

The canon from Elvira imposes severe penalties. A cleric who violates the law is to be degraded and excommunicated. A layman offending for the first time is to be treated indulgently if he promises not to lend at interest again; if he persists, he too is to be excommunicated.

⁶ Mansi, III, 158.

⁷ Mansi, II, 472.

⁸ J. Alberigo et alii (ed.), Conciliorum Oecumenicorum Decreta (Bologna: Centro di Documentazione, and, N.Y.: Herder and Herder, 1962), p. 13.

⁹ Cyprian, De Lapsis, VI (PL, 4:470-71).

The first part of the canon, including the penalties to be imposed on delinquent clerics, was later incorporated by Gratian into his Decretum and hence passed into the Corpus Juris Canonici.¹⁰

In 314 Constantine summoned a council at Arles to deal with the Donatist schism. It approved 22 canons dealing with abuses resulting from the slackening of church discipline during time of persecution. The twelfth canon dealt with usury.¹¹

De ministris qui fenerant, placuit eos juxta formam divinitus datam a communione abstineri.

The canon deals explicitly only with clerics. The penalty threatened is excommunication. There is no mention, as there had been at Elvira, of degradation.

The problem of interest-taking was significant enough to command the attention of the first general council at Nicaea in 325. Its seventeenth canon reads as follows:¹²

¹⁰ Corpus Juris Canonici, I, 47, 5.

¹¹ Mansi, II, 472.

¹² Alberigo, p. 13.

Ἐπειδὴ πολλοὶ ἐν τῷ κανόνι ἐξετάζοντες τὴν
 πλεονεξίαν καὶ τὴν αἰσχροκερδίαν διώκοντες
 ἐπελάβοντο τοῦ θείου γράμματος τοῦ
 λέγοντος· 'Τὸ ἀργύριον αὐτοῦ οὐκ ἔδωκεν
 ἐπὶ τόκῳ', καὶ δανείζοντες ἑκατοστάς
 ἀπαιτοῦσιν, ἐδικαίωσεν ἡ ἀγία καὶ μεγάλη
 σὺνδοδος, ὥς εἴ τις ἐτρέψει μετὰ τὸν ὅρον
 τούτου τόκους λαμβάνων ἐκ μεταχειρίσεως, ἢ
 ἄλλως μετερχόμενος τὸ πρῶγμα ἢ ἡμιολίας
 ἀπαιτῶν, ἢ ὅλως ἕτερον τι ἐπινοῶν αἰσχροῦ
 κέρδους ἕνεκα, καθαιρεθήσεται τοῦ κλήρου καὶ
 ἀλλότριος τοῦ κανόνος ἔσται.

The council quotes Ps. 15:5 to support its condemnation;
 because of Nicaea's authority, this use of the psalm will recur re-
 peatedly, as shall be seen, in later conciliar statements. Canon 17
 makes it quite evident that the legislation was not merely preventative.
 It admits explicitly that many clerics were guilty of interest-taking, and
 it stipulates degradation and removal of their names from the church
 album as the penalty for the crime. It clearly outlaws the centesima,

¹³
 Cf. HL, I, p. 604 and 610.

the legal rate for money-loans in the eastern empire,¹⁴ and also the *ἡμίολον*, just approved by Constantine for loans of grain.¹⁵ While the Nicene prohibition itself is specified for clerics only, its use of Ps. 15, with its unrestricted and absolute rejection of usury, bore important influence on later all-inclusive prohibitions.¹⁶

In 348 a council assembled under Gratus at Carthage to draw up regulations for the local church, which was enjoying a temporary lull in its battle with the Donatists. It is the earliest African council from which a collection of canons survive. The

¹⁴ Cf. E. Sachau, *Syrische Rechtsbücher* (Berlin: Georg Reimer, 1907), I, 53, p. 29. The *Leges Constantini Theodosii Leonis*, the law-book for all oriental Christendom from the Caucasus to Egypt and Abyssinia and from Babylonia and Persia to the Mediterranean, contains the following ordinance: "Ferner spricht der Richter: Dies ist der Ordnung der Gerichte (Urteile?) der christlichen Könige, dass, wer Denare ausleiht und Zins nimmt, also nehmen soll: Für 100 Denare einen Denar im Monat. Wenn sich aber einer erfrecht und verlangt mehr, soll es ihm abgerechnet werden vom Kapitel."

¹⁵ Cf. *Cod. Theod.*, II, 33, 1.

¹⁶ Noonan, p. 15.

thirteenth canon forbade usury in strong terms:¹⁷

Abundantius episcopus Adrumetinus dixit: In nostro concilio statutum est ut non liceat clericis foenerare: quod etiam si sanctitati tuae, et huic concilio videtur, praesenti placito designetur. Gratus episcopus dixit: Novellae suggestiones quae vel obscurae sunt, vel sub genere latent, inspectae a nobis, formam accipient. Ceterum, de quibus apertissime Divina scriptura fanxit, non (dif)ferenda sententia est, sed potius exsequenda. Proinde quod in laicis reprehenditur, id multo magis debet in clericis praedamnari. Universi dixerunt: Nemo contra prophetas, nemo contra evangelia facit sine periculo.

Two items are especially worthy of note. First, the council states that usury is a flagrant violation of scripture. More explicitly the bishops declare that it is against the prophets and the gospel. This conciliar argument was, as already seen, a common patristic theme. Second, the council states clearly that interest-taking is reprehensible among laymen. The prohibition for clerics follows a fortiori. As noted earlier, there is no solid evidence that the prohibition of usury applied

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Mansi, III, 158; cf. also, PL, 84:184; HL, I, p. 841. This canon, along with many others on usury, found its way into the famous Hispana. This collection was compiled in Spain during the sixth and seventh centuries and indirectly (through the False Decretals) became an important source for medieval canon law. It contains, besides Leo's letter (PL, 84:762), canons on usury from the following councils: Elvira (PL, 84:304); Arles (PL, 84:239); Nicaea (PL, 84: 97); Carthage I (PL, 84:184); Laodicea (PL, 84:129); Carthage III (PL, 84:191); Carthage VI (PL, 84:223); Arles II (PL, 84:243); Agde (the canon given here is not authentic; it comes rather from the Statuta Ecclesiae Antiqua; PL, 84:273); Tarragona (PL, 84:311); Orleans II (PL, 84:285); Braga (really part of the Capitula Martini; PL, 84:583).

at first merely to clerics and only later to laymen. H.J. Schroeder's claim (in his comments on Nicaea's seventeenth canon) that laymen did not fall under the prohibition until the ninth century is utterly irreconcilable with the facts.¹⁸

A set of sixty fourth-century canons, embodied in early collections of ecclesiastical law under the name "Council of Laodicea," contains another prohibition of usury. The fourth canon from the collection reads:¹⁹

Περὶ τοῦτ, μὴ δεῖν ἱερατικοὺς δανείζειν καὶ
τόκοις καὶ τὰς λεγομέναις ἡμερολίσια λαμβάνειν.

Like the seventeenth canon of Nicaea, this briefer prescription forbids interest both in money and in kind. Again, the prohibition is specified only for clerics.

In spite of the weighty condemnatory conciliar legislation, lending at interest obviously continued. Theodoret (c. 393-c. 466)²⁰ relates in his Historia Ecclesiastica that it was one of the causes for Audius' revolt against the Church in the latter part of the fourth century.

¹⁸ Cf. Schroeder, p. 48.

¹⁹ Mansi, II, 564-65; cf. also, Cross, "Laodicea, Canons of," in Oxford Dictionary, p. 785.

²⁰ Theodoret, Historia Ecclesiastica, IV, 9 (PG, 82:1142).

Audius (dates uncertain) was an outspoken critic of bishops and priests because of the lapses in their lives. He inveighed especially against their love of money, and in particular against their practice of usury. Breaking finally with the Church, he founded a rigoristic sect and propagated it among the Goths.²¹ While condemning the heretics, Theodoret admits that interest-taking went on:²²

They segregate themselves from church assemblies. Because some men practice damnable interest-taking and others live illicitly with women outside legitimate marriage, and because those who are free of these vices communicate freely with those who are guilty, they say that they will therefore live segregated from them, thus concealing the blasphemy of their dogmas. This is, however, a pretext full of arrogance, born of the teaching of the pharisees.

Besides formal conciliar legislation, the fourth century saw the invention of apostolic canons to strengthen ecclesiastical discipline. In a collection of canons of the Armenian Church²³ are two pseudo-apostolic canons prohibiting usury; both are from the fourth century.²⁴

²¹

G. Bareille, "Audiens," DTC, I, 2265-67.

²²

Theodoret, Historia Ecclesiastica, IV, 9 (PG, 82:1142), (transl. mine).

²³

Collectio Canonum Ecclesiae Armenae, in Fonti (Codificazione Canonica Orientale), (Vatican: Polyglot Press, 1930-), Series II, fasc. 21. The title Fonti has been used here throughout, though later pieces in the same collection have been entitled Fontes.

²⁴

P.V. Hatzuni, "Disciplina Armena," in Fonti, Series I, fasc. 8: Studi Storici, p. 141-168; cf. esp. p. 149 and 152.

The first, canon 18 under the heading Canones Apostolici Primi,
reads:²⁵

Constituerunt apostoli et statuerunt firmiter: ut qui
mutuum daret et reciperet usuram et foenus lucrumque
avaritiae lucraretur, eiusmodi ne reputaretur cum fi-
delibus neque in ordine sacerdotalis ministerii maneret.
Nonne is auditurus esset quod Creator praecipit Moysi:
Praeceptum filiis Israel ne exigant mutuum appropinquante
anno septimo, quanto magis poenis dignos existimaturi
essent eos qui in praesenti hoc facerent.

The canon is a general prohibition applicable to both clerics
and laymen, as is clear from the explicit invocation of the all-inclusive
Old Testament statement forbidding usury to everyone. The usual
penalties, excommunication and deposition, are threatened.

A second apocryphal apostolic canon, canon 42 under the
title Canones Apostolici Secundi, reads:²⁶

Episcopus vel presbyter vel diaconus foenus et usuras
exigentes a debitoribus aut desinant aut deponantur.

Here the penalty is deposition alone. The canon is clearly
restricted to clerics. It derives from a Greek source, which perhaps
goes back even beyond the fourth century.²⁷

²⁵ Collectio...Armenae, p. 19.

²⁶ Collectio...Armenae, p. 60.

²⁷ This canon is also present in the pseudo-Clementine Octateuchus,
which is preserved in Syriac, Arabic and Coptic. Many of the canons in
this collection derive from the Fathers of the first centuries, but underwent
much subsequent change. Cf. F. Nau, "Canons des Apôtres," DTC, II,
1605-26; esp. 1612-1618.

A collection of canons assembled by Mar Abdišo (d.1318)²⁸ provides two early apocryphal apostolic canons.²⁹ The first, canon 14 under the heading Canones Apostolorum I^o, reads as follows:³⁰

Quod ille qui mutuum dat et sumit usuram, non amplius ministret.

Again, the canon deals only with clerics and prohibits delinquents from further exercise of office.

The second of these canons, canon 44 of the Canones Apostolorum 2^o³¹, is the same as canon 42 of the Canones Apostolici Secundi from the Armenian collection, already discussed.

The late fourth-century Didascalia Addaei provides another pseudo-apostolic canon forbidding usury:³²

²⁸ Caldei - Diritto Antico, in Fonti, Series II, fasc. 15.

²⁹ C. Korolevskij, "Classification et Valeur des Sources Connues de la Discipline Chaldéenne," Fonti, Series I, fasc. 8: Studi Storici, p. 665-706; esp. p. 687. Korolevskij places both canons in the fourth century.

³⁰ Caldei - Diritto Antico, p. 37.

³¹ Caldei - Diritto Antico, p. 41.

³² Disciplina Antiochena Antica - Siri II, in Fonti, Series II, fasc. 26, p. 37. (transl. mine).

Again the apostles decided that whoever lends at interest and receives usury and whoever gives himself to commerce and to avarice will no longer serve and will not remain in his office.

Like many of the canons already seen, this one is restricted to clerics and prohibits delinquents from further exercise of office.

Another pseudo-apostolic canon on usury is found within a group of canons from Ethiopia.³³ While the canons are from the late fourth century, much of the material in them is earlier. Canon 42 reads:³⁴

Si quis Episcopus, presbyter aut diaconus quaerit utilitatem ex mutuo, aut usuram, deponatur ab ordine suo, nisi revera se emendet et relinquit hunc agendi modum.

Once again, the canon applies explicitly only to clerics and threatens deposition unless the offender amends his ways.

On Oct. 8, 393, the bishops of the non-Donatist Catholic Church of Latin Africa met at Hippo under Aurelius, bishop of Carthage, and approved a series of canons which is known only through the third council of Carthage (397). A summary of the canons from Hippo was read at Carthage and its substance was re-enacted.³⁵ It passed, via

³³ Testi di Diritto Antichi Riguardanti Gli Etiopi, in Fonti, Series I, fasc. 6.

³⁴ Testi, p. 499.

³⁵ Cf. HL, II, p. 101; Mansi, III, 922; PL, 56:426.

the ³⁶Hispana and the Quinisext Council, ³⁷ into general canon law.
The ³⁸Hispana version, quoted in Corpus Juris Canonici, reads as
³⁹follows:

Ut nullus clericorum amplius recipiat, quam cuiquam
quod commodaverit: si pecuniam, pecuniam accipiat:
si speciem, speciem: quantum dederit accipiat: et
quidquid aliud, tantum quantum dederit.

The canon, like Nicaea's seventeenth, outlaws usury of
any type, whether in money or in kind. It applies explicitly only to
clerics. The statement of the case is strikingly similar to St. Jerome's
treatment of the same problem just a decade or so later in his commentary
on Ezekiel (c. 410). ⁴⁰

The final chapter of the famous Apostolic Constitutions
(c. 400) contains a series of 85 pseudo-apostolic canons, many of
which come from early councils and the writings of the Fathers. The
forty-fourth canon of this very popular collection is identical with canon
42 of the Armenian Canones Apostolici Secundi, which has already been
discussed. As mentioned in that context, the Greek text (at least sub-
stantially the same as that which follows) was the original. ⁴¹

³⁶
PL, 84:191.

³⁷
Mansi, XI, 929-1006.

³⁸
Corpus Juris Canonici, "Decreti," pars II, causa 14, q. 4, c. 6.

³⁹
PL, 84:191.

⁴⁰
Jerome, In Ez. Commentarii, 6, 18 (PL, 25:176-77).

⁴¹
F. X. Funk, Didascalia et Constitutiones Apostolorum
(Paderborn: Ferdinand Schoeningh, 1905), p. 579.

Ἐπίσκοπος ἢ πρεσβύτερος ἢ διάκονος
τόκους ὑψηλῶν τοῦτ' ἀναλόμενους
ἢ παντάσῳ ἢ καθαρῶς.

In 401 the Sixth Council of Carthage, meeting under Aurelius, again pronounced against usury:⁴²

Quoniam plures in canone constituti cupiditatem et lucra turpia sectantur, oblique sanctae Scripturae dicentis: Qui pecuniam suam non dedit ad usuram, cum fenerantur aliis centesimas exigunt; juste statuit sanctum et magnum concilium, ut si quis inventus fuerit post hanc definitionem usuras accipiens et aliud quid excogitans turpis lucri gratia, abjiciatur a clero et alienus a canone sit.

As is evident from the text, the prohibition is a reworking of Nicaea's seventeenth canon, with a few omissions. It invokes Ps. 15:5 against the usurer and threatens him with deposition and removal of his name from the album if he persists in his crime.

But clerics did persist in taking usury. In 410 the Synod of Seleucia-Ctesiphon reaffirmed previous conciliar legislation in its fourth canon:⁴³

⁴²
PL, 84:223; cf. also, HL, II, p. 125.

⁴³
Disciplina Antiochena Antica Siri IV, in Fonti, Series II, fasc. 28, p. 408. (transl. mine).

We will also willingly observe what is prescribed in the Synod (i.e., Nicaea) concerning dishonest gain, interest and usury. Henceforth everyone taking part in the ministry of the Church, whatever be his rank among the clergy, if he takes usury and interest, will be deprived of the ministry and will no longer have communion with us.

The synod threatens both deposition and excommunication in its very strong statement. Its severity once again witnesses to the gravity of the usury problem in the East. The outlines of a similar dim picture have already been seen in the homilies of the Cappadocians and Chrysostom, from roughly the same period and locality.

A short time after the Synod of Seleucia-Ctesiphon, Rabbula, bishop of Edessa (412-435), enacted the following canon:⁴⁴

Priests, deacons, and male and female religious will not demand interest or usury or any type of profane profit.

Rabbula's prohibition includes more than the clergy, extending also to monastic communities. It does not, however, explicitly include most of the laity, nor is it strengthened with any of the usual penalties.

⁴⁴ Disciplina Antiochena Antica Siri II, in Fonti, Series III, fasc. 26, p. 415. (transl. mine).

Around the year 419 a collection of canons, usually called the Codex Canonum Ecclesiae Africanae, was gathered together from earlier conciliar and patristic sources. The fifth canon from the collection is obviously taken from the Council of Carthage in 348,⁴⁵ with a few changes. The use of this canon in the collection is significant in that it again shows that usury was⁴⁶ considered illicit not just for clerics but for laymen as well.

Aurelius episcopus dixit: Avaritiae cupiditas, quam rerum omnium malarum matrem esse, nemo qui dubitet, proinde inhibenda est, ne quis alienos fines usurpet, aut per praemium terminos patrum statutos transcendat, nec omnino cuiquam clericorum liceat de qualibet re foenus accipere. Quamquam novellae suggestiones, quae vel obscurae sunt, vel sub genere latent, inspectae a nobis formam accipient; ceterum de quibus apertissime divina scriptura fanxit, non est ferenda sententia, sed potius exequenda. Proinde quod in laicis reprehenditur, id multo magis debet in clericis praedamnari. Universum concilium dixit: Nemo contra prophetas, nemo contra evangelia facit sine periculo.

⁴⁵ Mansi, III, 158.

⁴⁶ Mansi, III, 711.

The sixteenth canon of the same collection repeats the condemnation of every kind of interest, incorporating into a more general framework the enactment previously discussed in connection with the Council of Hippo (393) and the Third Council of Carthage⁴⁷ (397):

Item placuit, ut episcopi, presbyteri, § diaconi non sint conductores, aut procuratores, neque ullo turpi negotio § inhonesto victum quaerant, quia respicere debent scriptum esse: Nullus militans Deo, implicat se negotiis saecularibus. Item placuit ut lectores, cum ad annos pubertatis pervenerint, cogantur aut uxores ducere, aut continentiam profiteri. Item placuit, ut clericus, si commodaverit pecuniam accipiat: si speciem, quantam dederit accipiat: § ut ante xxv. annos aetatis nec diaconi ordinentur, nec virgines consecrentur: § ut lectores populum non saluent.⁴⁸

⁴⁷ Cf. PL, 84:191.

⁴⁸ Mansi, III, 718.

Another fifth-century collection, the twenty-five canons of the so-called "Second Council of Arles" is probably merely a private collection which never received conciliar authority.⁴⁹ It is, however, based on earlier councils held elsewhere. Its fourteenth canon condemns usury as follows:⁵⁰

Si quis clericus pecuniam dederit ad usuram, aut conductor alienae rei voluerit esse, aut turpis lucri gratia aliquod negotiationis exercuerit, depositus a communione alienus fiat.

Again the canon is restricted to clerics, and delinquents are threatened with deposition and excommunication.

From the fifth century also come the "Arabic Nicene Canons."⁵¹ This collection was discovered in Egypt and brought to Europe in the sixteenth century, creating an immediate sensation. At that time several authors defended its authenticity, but today no one does.⁵² Its usury prohibition, also extant in an abridged Chaldean form,⁵³ reads as follows:⁵⁴

⁴⁹ F. L. Cross, "Arles, Synods of," Oxford Dictionary, p. 85.

⁵⁰ Mansi, VII, 880.

⁵¹ Disciplina Antiochena Antica Siri II, in Fonti, Series II, fasc. 26.

⁵² I. Ortiz de Urbina, Nicée et Constantinople (Paris: Éditions de l'Orante, 1963), p. 96.

⁵³ Caldei - Diritto Antico, p. 48.

⁵⁴ Disciplina Antiochena Antica Siri II, p. 289; cf. also, Mansi, II, 998.

Nullus sacerdos det foenori pecuniam suam, neque usura utatur, aut quaestum iniquum et illicitum faciat, neque cum Judaeis ineat societatem aut fraternitatem. Siquidem hoc Apostoli statuerunt et proinde juste ac debite hoc facere oportet omnes fideles atque sequi. Quicumque autem huic sanctioni contradixerit excommunicatus denunciatur.

The canon applies to all the faithful, though it focuses especially on priests. Typically, it claims apostolic support and threatens violators with excommunication. But untypically, in both the abridged and longer forms, it unites the condemnation of usury with anti-semitism. As seen earlier, the Jews, even around 41 A.D.,⁵⁵ were already notorious for their practice of usury. In medieval times, since Jews were unaffected by the threat of excommunication, the Fourth Lateran Council (1215) prescribed that Christians boycott them commercially.⁵⁶ It is interesting that the present canon, which antedates Fourth Lateran by more than seven hundred years, prescribes similar harsh treatment for Jews.

Another set of 102 fifth-century canons, cited by the Hispana as belonging to the non-existent Fourth Council of Carthage (supposedly

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Wilcken, p. 567.

⁵⁶

Cf. canon 67, Quanta Amplius in Decretales V:19:18; cf. also, HL, V, p. 1386.

held in 398) takes up the usury question in relation to ordination.

The collection, sometimes labeled Statuta Ecclesiae Antiqua, probably originated from Gaul in the latter part of the fifth century.⁵⁷

Canon 55 reads:⁵⁸

Seditionarios nunquam ordinandos clericos, sicut nec
usurarios, nec injuriarum suarum ultores.

The prescription is stricter than the eastern legislation on the ordaining of usurers, already discussed in connection with Basil's third canonical letter.⁵⁹ Basil allowed for the reception of orders if the usurer was willing to spend his unjust profit on the poor and cease from interest-taking. His letter acquired the force of law throughout the east. Canon 55 of the Statuta, however, of western origin, states plainly that usurers should never be ordained. It makes no provision for those aspirants who had repented.

In spite of repeated legislation, however, usury among clerics went on in Gaul (as elsewhere) at this time. Though a council at Tours condemned usury again in 461,⁶⁰ it is evident from the writings of Sidonius Apollinaris, bishop of Clermont (430-489),⁶¹ that clerics continued to

⁵⁷
F.L. Cross, "Statuta Ecclesiae Antiqua," Oxford Dictionary,
p. 1288.

⁵⁸
HL, II, p. 117; cf. also, PL 56:885 and PL, 84:205.

⁵⁹
Basil, Ep. clxxxviii (PG, 32:682).

⁶⁰
HL, II, p. 900; cf. also Hardouin, Acta Conciliorum (Paris,
1715 -), II, 796.

⁶¹
Cf. Sidonius Apollinaris, lib. iv, ep. xxiv: ad Turnum

take interest in his time and that Sidonius himself did not entirely disapprove of the practice.

In this context --- the continuing practice of usury and
the repeated legislation against it --- the ⁶²Nec hoc quoque of
Leo the Great is hardly anything new. Leo's letter merely sums up
what was already the long-standing patristic and conciliar teaching
on the subject. He threatens deposition and excommunication, as
local councils had already done. He explicitly includes both clerics
and laymen under the prohibition, as had the Council of Elvira (306),
the Council of Carthage (348), the Codex Canonum Ecclesiae Africanae
(419) and numerous Fathers. He invokes sacred scripture (Ps. 155) to
support his stand, as almost all earlier Fathers had done and as the

(PL, 58:528-31). In the letter Sidonius describes how he went to his friend Maximus, a priest, to beg his mercy on a dying man who owed Maximus a sum of money, the interest on which had accumulated over ten years. Maximus replies that he will be content with the principal. Sidonius describes his own reaction: "At this I gave chief thanks to God and also no small thanks to my host for so cherishing both his good name and his conscience." Recommending that the debt be paid immediately, he continues: "...when you are under a contract with a person of such a nature that he is willing to remit half the debt when he could exact the whole, then, if you keep him waiting, he might justly claim back because of this ill usage all that he had charitably remitted out of compassion." The letter indicates that Sidonius took interest-taking as a matter of course. Cf. also, W.B. Anderson, Sidonius ("Loeb Classical Library"), (Cambridge: Harvard University Press, 1965), II, p. 154-55.

⁶²

PL, 54:613. Cf. chapter IV for the full text of the letter.

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canons of the Council of Nicaea (325), the Council of Carthage (348) and other early councils had also done. But through Leo the early Christian attitude toward usury had great influence on medieval thought. Nec hoc quoque came to form the cornerstone of later usury legislation. Through its entry into the Hadriana,⁶³ the most influential body of ecclesiastical legislation for Charlemagne's empire, it played a vital role in preparing the way for the general imperial prohibition of usury enacted in Charlemagne's capitularies.⁶⁴

But this is to go beyond the scope of the present work.

By Leo's time, and even before that, the Christian teaching on usury was already quite clear. That teaching, in its conciliar form, may now be summarized.

1. A continuous string of councils in both east and west condemned usury.
2. The councils considered usury grave sin and often imposed severe penalties (excommunication and deposition) on violators of the prohibition.

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Cf. F. Maassen, Geschichte der Quellen und der Literatur des canonischen Rechts im Abendlande (Gratz: von Leuschner & Lubensky, 1870), I, p. 441-71.

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Cf. Monumenta Germaniae Historica, Legum, sect. II: Capitularia Regum Francorum, tome I, p. 54: "Omnibus (i.e., the prescription applies to everyone). Item in eodem concilio (Nicaea, c.17) seu in decretis papae Leonis necnon in canonibus quae dicuntur apostolorum, sicut et in lege ipse Dominus praecepit, omnino omnibus interdictum est ad usuram aliquid dare."

3. Even in the earliest conciliar legislation usury was condemned for both clerics and laymen. While it is true that extant canons refer more often to clerics than to laymen, this fact should not be interpreted as meaning that laymen came to fall under the prohibition only gradually. As seen in the fourth chapter, the witness of the eastern and western Fathers does not support such an interpretation. In addition, the Council of Elvira (306), an early council at Carthage (348), the eighteenth canon of the Armenian Canones Apostolici Primi (4th cent.), the fifth canon from the Codex Canonum Ecclesiae Africanae (c. 419), and Leo's Nec hoc quoque all explicitly include laymen under the prohibition. While some councils, like those of Arles (314) and Nicaea (325), treat the problem explicitly only in reference to clerics, it does not follow from this that laymen were permitted to take interest at that time. As mentioned above, usurious clerics were especially notorious. For the most part, when councils took up the question, it was to impose penalties on such delinquents. Usury was forbidden to them a fortiori, but, as the evidence presented attests, it was forbidden to laymen as well.
4. Councils used sacred scripture, especially Ps. 15:5, to support the condemnation. Conciliar legislation, like the writings of the Fathers, viewed usury as contrary to the law and the prophets.
5. Conciliar legislation was not merely preventive, nor was it particularly successful. It is quite clear from the frequency and the wording of conciliar

statements on the problem that usury was not at all uncommon among both clerics and laymen.

6. As with other matters of some import in the early Church, apostolic canons were invented to bolster the authority behind the prohibition.

CONCLUSION

By the time of Leo the Great the Christian teaching on usury had become quite clear: to take profit on a loan is sinful; or, as Leo put it epigrammatically: fenus pecuniae funus est animae.

This study has attempted to trace the roots of that teaching and its development, from the first restrictions on interest-taking in the Laws of Eshnunna (c.1925 B.C.) down into the fifth century of the Christian era. The detailed results of the study have already been summarized in each chapter.

In retrospect it is quite clear that the Israelite prohibition played a decisive role in the formation of the Christian attitude toward usury. Israel's neighbors allowed interest, while restricting it. An examination of ancient Near-Eastern legal and non-legal sources outside Israel reveals detailed regulations concerning loans, especially regarding rates of interest; at the same time the sources make it quite evident that interest-taking was common practice. Yet Israel forbade it. Historically, the context of the Israelite prohibition is important, especially in view of the change in late medieval Christian thinking about usury. Israelite law repeatedly called for special consideration for the poor among the brethren. It was in this context that the usury prohibition arose. To take interest from a poor brother was to oppress him, to profit from his need; the law, therefore, forbade it. The prohibition was

concrete and limited. As circumstances varied, later texts attempted to take them into account. The Israelite might not take interest on money or food or anything else if the borrower was a fellow-Israelite. He might take interest from a foreigner, however, who was not one of the brethren.

Rabbinical literature went far beyond the Israelite prohibition. It extended the meaning of usury to include even what looked like usury. At times it equated the sin of usury with the shedding of men's blood and the denial of Yahweh. Reflections of rabbinical literature can be seen in the writings of the Fathers.

In Greece and Rome, as in the ancient Near East (outside Israel), interest-taking, again with some restrictions, was part of daily life. But strangely, the greatest Greek philosophers, against the tide of the times, condemned usury. Aristotle's argument, based on the nature of money, found echoes in patristic writings, though direct dependence cannot be demonstrated. Generally, in spite of the philosophers, lending at interest went on as a matter of course. It was in this milieu, and at variance with it, that the Christian teaching on usury developed.

The Fathers saw the Old Testament prohibition as still binding. They cited the prohibition texts over and over again. Significantly for later history, they continually treated usury in the context of oppression of the poor, though they applied the prohibition to cases where the poor were

not involved.

Even in patristic times questions arose which would be critical for later development of thought on usury, but they were not satisfactorily answered. The Fathers failed to grapple with some crucial problems: what immanent values does the prohibition seek to foster? what about cases where those values are not at stake? These problems would await solution in later history.

Meanwhile, a continuous string of councils, often using sacred scripture to support their position, condemned usury and imposed severe penalties on transgressors. The prohibition encompassed both clerics and laymen and was not infrequently violated by both. At the same time pseudo-apostolic canons were invented to bolster the prohibition further.

As the fifth century dawned, the Christian teaching on usury was already quite clear and awaited the authoritative summary that Nec hoc quoque would provide: no one could take usury, or profit on a loan, without sin. The continuing course of history would alter that position drastically.

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CSEL	<u>Corpus Scriptorum Ecclesiasticorum Latinorum.</u> Vienna, 1866 - .
DACL	<u>Dictionnaire d' Archéologie Chrétienne et de Liturgie,</u> ed. T. Cabrol and H. Leclercq. Paris, 1924 - 1953.
DTC	<u>Dictionnaire de Théologie Catholique.</u> Paris, 1903 - 1950.
Fonti	Fonti ("Codificazione Canonica Orientale"). Vatican, 1930 - .
GCS	<u>Die Griechischen Christlichen Schriftsteller der Ersten Drei Jahrhunderte.</u> Leipzig, 1897 - .
ICC	"International Critical Commentary." New York, 1895 - .
Mansi	G.D. Mansi, ed. <u>Sacrorum Conciliorum Nova et Amplissima Collectio.</u> Florence, 1759 - 1767; Venice, 1769 - 1798.
RIDA	<u>Revue Internationale des Droits de l' Antiquité.</u>
PG	<u>Patrologia Graeca,</u> ed. J.P. Migne, Paris, 1857 - 1866.
PL	<u>Patrologia Latina,</u> ed. J.P. Migne. Paris, 1844 - 1865.
TU	<u>Texte und Untersuchungen zur Geschichte der Alchristlichen Literatur.</u> Leipzig-Berlin, 1882 - .

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